No. 514.
Brief of Barber for Appellants
Filed Feb. 28, 1898.

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BRIEF FOR APPELLANTS.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, AND M. PETERMAN, APPELLANTS,

vs.

W. A. VANDERCOOK COMPANY.

Appeal from the Circuit Court of the United States for the District of South Carolina.

WILLIAM A. BARBER,
ATTORNEY GENERAL OF SOUTH CAROLINA,
For Appellants.

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vs.

W. A. VANDERCOOK COMPANY.

Brief Submitted in Behalf of Appellants, by Wm. A. Barber, Attorney General of South Carolina.

STATEMENT OF THE CASE.

On the third day of May, 1897, the W. A. Vandercook Company, a corporation under the laws of the State of California, and citizen of California, filed a bill in the Circuit Court of the United States for the District of South Carolina, against S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, M. Peterman, and all other persons acting as officers of the State of South Carolina, under the Act of the General Assembly of said State, known as the "Dispensary Law," approved March 5, 1896, and amended March 6, 1897, alleging that the complainant is the proprieter of vineyards in the State of California, where wines, brandies, and other liquors are manufactured, claiming the right to import their product into the State of South Carolina, and there expose for sale and sell the same in unbroken, original packages to citizens and residents of said State; and

praying that the defendants be restrained and enjoined from in any wise interfering with the business of the complainant in selling their product in the State of South Carolina, as aforesaid.

The bill alleges that so much of the said Dispensary Act as prevents the complainant from so selling wines, brandies, and other liquors to the citizens and residents of the State of South Carolina is in conflict with Article I., Sections 8 and 9, of the Constitution of the United States. This bill was filed after the complainant had shipped into the State a quantity of wines, brandies, and other liquors, which were seized by some of the defendants under the said Dispensary Law, and in consequence of said seizure. Upon filing the bill, a rule to show cause was issued, returnable on May 17th, 1897, at which time the respondents filed returns, submitting that the Court was without jurisdiction: (1) because the bill presented no question arising under the Constitution and laws of the United States; (2) because there is no equity in the bill, as there are plain and adequate remedies at law for the redress of the matters therein alleged. As a further return, the defendants answered each and every allegation in the bill of complaint, and justified their action under the authority of the Dispensary Act, approved March 5, 1896, as amended March 6, 1897, which said Act they contend is a valid exercise of the police power of the State.

Upon hearing the case, the Circuit Court granted a temporary order of injunction, and a temporary writ was issued on June 7, 1897. Since the filing of the interlocutory injunction, the complainant, the W. A. Vandercook Company, have established in Charleston, Columbia, Greenville, and other cities, agencies for storing, warehousing, and selling their wines, brandies and other liquors, in, what they claim, are original, unbroken packages, and have appointed citizens of South Carolina as their agents. These liquors are sold in quantities as small as one-half pint, and are not subjected to any system of inspection or analysis.

The defendants filed their answers in due time, and upon a final hearing the Circuit Court rendered a decree, "That the interlocutory injunction and decree hereinbefore decreed by this Court, dated June 3d, 1897, be made permanent, and do stand as the decree of this Court."

From this the appeal is taken to this Court, raising the following questions:

First. Whether the bill of complaint presents a question arising under the Constitution and laws of the United States.

Second. Whether the complaint states facts entitling the complainant to relief in a Court of Equity.

Third. Whether the provisions of the Dispensary Law of South Carolina, approved March 5, 1896, and amended March 6, 1897, prohibiting non-resident manufacturers and liquor dealers from importing wines and liquors into the State of South Carolina, and there storing, offering for sale, and selling the same in unbroken packages of one pint, one quart, one gallon, and the like, are in the lawful exercise of the police power of the State.

Fourth. Whether the terms of the Dispensary Act, as amended, providing for the inspection of all liquors brought into the State for use or sale, are a lawful exercise of the police power of the State.

The appellants contend that no Federal question is presented to give jurisdiction to the Court, and that the Dispensary Law is constitutional and valid, in so far as it prohibits non-resident manufacturers and dealers from importing their liquors into the State of South Carolina, and there selling the same, either themselves or through their agents, the said agents being citizens of said State.

ARGUMENT.

I.

It is essential to a full consideration of this case to differentiate in the outset the Act of the General Assembly of South Carolina under which the question arises from the Act of January 2, 1895, under which this Court decided the case of Scott et al. v. Donald. We can not do so in any better way than by contrasting the sections of the former Act referred to by this Court in its decision in that case with the correspondings sections of the Act as it now stands.

ACT OF 1895.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the manufacture, sale, barter or exchange, receipt, acceptance, delivery, storing and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges, by any person, firm, association or corporation, upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited, under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors, except when bought from a State officer authorized to sell the same, or in possession of one, are declared to be contraband and against the morals, good health and safety of the State, and may be seized wherever found, without warrant, and turned over to the State Commissioner.

PRESENT ACT.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereafter provided, is hereby prohibited, under a penalty of not less than three nor more than twelve months at hard labor in the State penitentiary, or pay a fine of not less than $100 nor more than $500, or both and imprisonment, in the discretion of the Court, for each offense. All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful and deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized whenever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed, or other liquor containing alcohol from any other State or foreign country, shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to

forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample, the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters, he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee, and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by said chemist, post paid, to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped in this State, and no package bearing such certificate shall be liable to seizure and confiscation; but any package of spirituous, malt, vinous, fermented, brewed, or other liquor or liquid containing alcohol imported into this State without such certificate, or any package containing liquor other than described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided, shall be used within sixty days after the date of its issue, and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any person attempting to counterfeit said certificate, or to make any improper use thereof, or who shall make any false statement in obtaining or attempting to obtain the same, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for not less than thirty days nor more than twelve months, or to pay a fine of not less than $100 nor more than $1,000. Any person or persons convicted of selling or otherwise

unlawfully disposing of any liquor imported under the provision of this section, shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this section, including compensation for such assistant chemists as may be necessary to make prompt analysis and the express charges on samples shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with this section, he shall, upon conviction thereof before a Court of competent jurisdiction, be fined $100 for each offense.

SEC. 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, purchase all intoxicating liquors for lawful sale in this State, and furnish the same to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside, and have his place of business, in the city of Columbia, in this State, and hold his office two years from his appointment, and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of $2,500, payable at

SEC. 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful sale in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the city of Columbia, in this State, and hold his office two years from his appointment, and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of $1,900, payable from the dispensary fund upon

the same time and in the same manner as is provided for the payment of the salaries of State officers. He shall be allowed a book-keeper, who shall be paid in the same manner a salary of $1,200; and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not sell to the County dispensers any intoxicating or fermented liquors, except such as have been tested by the chemist of the South Carolina College and declared to be pure: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants. The State Commissioner shall deposit all amounts received by him from sales to County dispensers or others with the Treasurer of the State under such rules as may be made by the State Board of Control to insure the faithful return of the same, and the State Treasurer shall keep a separate account with said fund, from which the Commissioner shall draw from time to time, upon warrants duly approved by the chairman of said Board, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner in the purchase of intoxicating liquors or in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. He shall, before entering upon the duties of his office, execute a bond to the State Treasurer, with sufficient sureties, to be approved by the Attorney General, in the penal sum of $25,000, for the faithful performance of the duties of his office. In all purchases the warrant of the State Board of Control. He shall be allowed a book-keeper, who shall be paid in the same manner a salary of $1,200, and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not furnish to the County dispensers any intoxicating or fermented liquors, except such as have been tested by the chemist of the South Carolina College and declared to be pure and free from poisonous, hurtful, and deleterious matter: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants. Each County dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County dispensers in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall, before entering upon the duties of his office, execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers, in the penal sum of $10,000, for the faithful performance of the duties of his office. In all purchases

duties of his office. In all purchases or sales of intoxicating liquors made by said Commissioner, as contemplated in this Act, the Commissioner shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to him from the place of purchase or by him to the County dispensaries, certified by his official signature and seal, which certificate shall state that liquors contained in said packages have been purchased by him for sale within the State of South Carolina, or to be shipped out of the State, under the laws of said State; and without such certificate, any package containing liquors which shall be shipped out of the State, or shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband, and may be seized without warrant, for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the Commissioner, or any counterfeit certificate, for the purpose of securing the transportation of any intoxicating liquors out of or within this State, in violation of law, shall, upon conviction thereof, be punished by a fine of not less than $500, and imprisonment in the penitentiary for not less than one year for each offense.

or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors, when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the County dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for sale and use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates, any package containing liquors which shall be shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband, and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the State Board of Control, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating liquors within this State in violation of law, shall, upon conviction thereof, be punished by a fine of not less than $500, and imprisonment in the penitentiary for not less than one year for each offense.

SEC. 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter or dispense any liquors containing alcohol, for any purpose whatsoever, otherwise than is provided in this Act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State shall first obtain from the State Board of Control a permit or license so to do, and it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol, the applicant shall give the State full power, upon any violation of this Act, to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government the tax upon the same if unpaid, and to dispose thereof as provided herein for contraband goods. Dispensers as herein provided shall alone be authorized to sell and dispense liquors containing alcohol, and all permits must be procured by such dispensers as herein provided from the County Board of Control: Provided, That the manufacturers of distilled, malt or vinous liquors who are doing business in the State shall be allowed to sell to no person in this State except the State Commissioner and to parties outside the State, and the State Commissioner shall purchase

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his supplies from the brewers and distillers in this State when their product reaches the standard required by this Act: Provided, Such supplies can be purchased as cheaply from such brewers and distillers in this State as elsewhere. And provided further, That the State Commissioner shall have the right, and he is hereby empowered, to purchase malt liquors from breweries of this State, and also from breweries outside of this State, who may have agents representing them in this State. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Commissioner allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished as in section 3: And provided, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the inspector to enter and examine his place of business and its appurtenances at such times as the inspector may deem proper shall forfeit his permit or license.

SEC. 23. The State Commissioner, under rules and regulations provided by the State Board of Control, may enter into contracts with responsible grape growers in this State for the sale of domestic wines through the Dispensary, so as to encourage grape growing in this State, and in furtherance of this object, not more than ten per cent. profit to the Dispensary over the expenses of bottling, labeling, freighting, etc., shall be charged for the

as in section 3: And provided, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the inspector or constable to enter and examine his place of busines and its appurtenances at such times as the inspector or constable may deem proper, shall forfeit his permit or license.

SEC. 23. The manager of every registered distillery of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distil-

handling of such wines. The manager of every registered distillery of liquor in this State shall report quarterly to the State Commissioner, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Internal Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

SEC. 31. In all cases of seizure of any goods, wares or merchandise hereafter or heretofore made as being subject to forfeiture under any provision of this Act or the former Act, which, in the opinion of the officer or person making the seizure, are of the appraised value of $50 or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina, residing within the County wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of $1 per day, not exceeding five days, to be paid by the State Commissioner. Second. If the said goods are believed by the officer making the seizure to be of less value than $50, no appraisement shall be made. The said officer or person shall proceed to publish a notice

lery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

SEC. 31. In all cases of seizure of any goods, wares, merchandise, or any other property, hereafter or heretofore made as being subject to forfeiture under any provisions of this Act or any former Act, which, in the opinion of the officer or person making the seizure, are of the appraised value of $50 or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina, residing within the County wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of $1 per day, not exceeding five days, to be paid by the State Board of Control. Second. If the said goods are believed by the officer making the seizure to be of less value than $50, no appraisement shall be made. The said officer or per-

for three weeks, in writing, at three places in the County where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. Any person claiming the liquors so seized as contraband, and the vessels containing the same, within the time specified in the notice, may file with the State Commissioner a claim, stating his interest in the articles seized, and may execute a bond to the State Commissioner in the penal sum of $500, with sureties, to be approved by the said State Commissioner, conditioned that in the case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Commissioner, he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State chemist, and if pure, shall sell the same through the State Dispensary as though purchased by him. If not pure, he shall sell the same beyond the State and deposit the proceeds to the credit of the State Commissioner: Provided, That in seizures in quantities less in value than $50 of such illicit liquor or liquors, the same may be advertised with other quantities at Columbia by the State Commissioner and disposed of as hereson shall proceed to publish a notice for three weeks, in writing, at three places in the County where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. Any person claiming the liquors or other property so seized as contraband within the time specified in the notice, may file with the State Board of Control a claim stating his interest in the articles seized, and may execute a bond to the State Board of Control, in the penal sum of $500, with sureties, to be approved by the said State Board of Control, conditioned that in the case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Board of Control, he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State chemist, and if pure, shall furnish the same through the State Dispensary. If not pure, the same shall be destroyed by the chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed: Provided, That in seizures in quantities less in value than $50 of such illicit liquors or liquids, the same may be advertised with other quantities at

inbefore provided: Provided, further, That the claimants of such liquors may give bond in $100 as when the value is $50 or over, and shall bear the burden of showing before a Trial Justice that he has complied with the law and that the liquor is not liable to seizure.

Columbia by the State Board of Control, and disposed of as hereinbefore provided: Provided, further, That the claimants of such liquors may give bond in $100 as when the value is $50 or over, and shall bear the burden of showing before a Magistrate that they have complied with the law, and that the liquor is not liable to seizure.

A comparison of these sections shows that the Act with which we are now dealing is radically different from that upon which the decision in *Donald* v. *Scott* was rendered. The former Act provided that all intoxicating liquors, "except when bought from State officers authorized to sell the same, or in possession of one, are declared to be contraband and against the morals, good health and safety of the State, and may be seized wherever found, without warrant, and turned over to the State Commissioner." As I construe the decision of the Court, it was largely in view of this standard that the Act was condemned. Speaking of it, Mr. Justice Shiras, delivering the opinion of the Court, said: "The prohibition of the importation of wines and liquors of other States by the citizens of South Carolina for their own use is made absolute, and does not depend on the purity or impurity of the article. Only the State functionaries are permitted to import into the State, and those citizens who wish to use foreign wines and liquors are deprived of the exercise of their own judgment and taste in the selection of commodities."

The second objection taken by the Court was that the Act discriminated in some of its provisions against the citizens and products of other States in favor of the citizens and products of South Carolina. Referring to this discrimination, the Court said: "The fifteenth section enacts that any person, firm, association, or corporation desiring or intending to manufacture or distill any liquors containing alcohol within the State, shall first obtain from the State Board a permit or license to do so; and said section further provides that manufacturers of distilled, malt or vinous liquors who are doing business within this State shall be allowed to sell to no person in this State except the State Commissioner and to parties outside the State; and the State Commissioner shall purchase his supplies from the brewers

and distillers in this State when their product reaches the standard required by this Act: Provided, Such supplies can be purchased as cheaply from such brewers and distillers in this State as elsewhere." So, too, the twenty-third section provides that "The State Commissioner may enter into contract with responsible grape growers in this State for the sale of domestic wines through the Dispensary, so as to encourage grape growing in this State; and in furtherance of this object not more than ten per cent. profit to the Dispensary over the expense of bottling, labeling, freighting, &c., shall be charged for the handling of such wines." But there is no such limitation of charge in the case of imported wines. And in case of seizure of contraband liquors, the thirty-first section provides that "the State Commissioner shall have the same tested by the State Chemist, and, if pure, shall sell the same through the State Dispensary as though purchased by him; and, if not pure, he shall sell the same beyond the State; and deposit the proceeds to the credit of the State Commissioner."

The grounds of objection, therefore, to the Act were the standard by which the legality or illegality of the liquors was determined; and, second, the discrimination made against foreign products. Upon these grounds the Court held that so much of the Dispensary law as prohibited the importation of liquors into the State of South Carolina for personal use and consumption, was invalid. The opinion was confined to these provisions, and after reviewing the cases, Mr. Justice Shiras said: "In the light of these cases, the Act of South Carolina, of January 2, 1895, must, *as to those of its provisions affecting the plaintiff in the present suit*, stand condemned."

He further said: "It is sufficient for the present case to hold, as we do, that if the State recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it can not discriminate against the bringing of such articles in, and in importing them from other States; that such legislation is void as a hindrance to interstate commerce and an unjust preference of the products of the enacting State as against similar products of other States." If the Act of 1895 had been as it now stands, might not the result have been different? By subsequent amendments the ob-

jectionable features have been removed. The standard by which the legality or illegality of the liquor is determined, is not in whose hands it is found, but whether it has been tested by the chemist, and found to be pure and free from poisonous, hurtful, and deleterious matters.

By reference to sections 15, 23 and 31, as hereinbefore quoted, it will be observed that the discriminations referred to in *Donald* v. *Scott* have been eliminated, and the Act as it now stands is free from such discriminating features. By comparing sections 1 and 3 of the present Act, it will be observed that liquors sold from the Dispensary and those imported by citizens for personal use under the Act are required to undergo the same test. In each instance, before liquors are permitted to be shipped into the State, samples thereof must be tested by the chemist of the South Carolina College and certified to be free from poisonous, hurtful, and deleterious matters. Therefore, if we were considering the Act from the standpoint of a citizen of South Carolina, desiring to import liquors into the State for his personal use and consumption, we might urge that the defects in the Act of 1895 have been cured by amendment. But this is not incumbent upon us here. We are to consider the Act as it affects the alleged right of non-resident manufacturers and liquor dealers to import their products into the State of South Carolina, and there store and sell the same in unbroken packages of one-half pint, one pint, one quart, and the like.

II.

The Dispensary Law, in so far as it prohibits non-resident manufacturers and liquor dealers from importing their product into the State of South Carolina and there selling the same, is a valid exercise of the police power of the State.

The Circuit Court of the United States, in the case now under consideration, construed the decision of this Court in *Scott* v. *Donald* as establishing not only the right of a citizen of South Carolina to purchase liquors in another State and import them for personal use, but also the right of a non-resident manufacturer or dealer to ship his products into the State, and there store and sell the same in unbroken packages, either himself or

through an agent, which agent might be a citizen of South Carolina. That the one proposition is the corollary of the other, is the conclusion against which we protest.

If the principle has been established by this Court that nothing short of total prohibition will close the markets of a State to the so-called "original package" dealers, and that principle is to be adhered to, further argument of this question is useless. But we can not so construe the decisions. That such is the theory of the Circuit Court, however, is beyond question. In the opinion in this case, his Honor, the Circuit Judge, says:

"Any State may, in the exercise of the police power, declare that the manufacture, sale, barter, and exchange, or the use as a beverage of alcoholic liquors, are public evils, and, having thus declared, can forbid such manufacture, sale, barter, and exchange, or use within her territory. But when a State recognizes and approves the manufacture, sale, barter, and exchange, and the use as a beverage of alcoholic liquors, and the State itself encourages the manufacture, engages in the sale of, and provides for the consumption of alcoholic liquors as a beverage, and so precludes the idea that such manufacture, sale, barter, exchange, or use are injurious to the public welfare, it is not a lawful exercise of the police power to forbid the importation of such liquors or their sale in original packages for personal use and consumption." (Transcript of Record, folio 45.)

Again: "It is clear that before the State can forbid the importation and sale in original packages of alcoholic liquors, it must declare the manufacture, sale and use as a beverage of all alcoholic liquors to be contraband and forbidden, and so take them out of the category of legitimate articles of commerce." (Transcript of Record, folio 55.)

Again: "If all alcoholic liquors, by whomsoever held, are declared contraband, they cease to belong to commerce and are within the jurisdiction of the police power; but so long as their manufacture, purchase or sale, or their use as a beverage in any form or by any person, are recognized, they belong to commerce, and are without the domain of the police power. The Act of 1897, like the Act of 1895, is condemned on these principles.

Neither of them is within the exercise of the police power." (Transcript of Record, folio 55.)

If the last quoted view be correct, the Wilson Act has been adjudicated out of existence, and the police power of the States rendered powerless to grapple with the liquor evil in any manner other than by total prohibition. To hold that articles within commerce "are without the domain of the police power," is to expand and extend any doctrine heretofore announced by this Court. The possibility of such a condition attracts the attention of every State in this Union whose laws regulate the liquor traffic. It threatens the destruction of every system of regulation short of prohibition. It alarms the advocates of the right of the States to regulate and control the manner in which liquor shall be sold in their markets.

The decision in *Scott* v. *Donald* furnishes no adequate support for such a theory. It is true that, referring to the Act of 1895, the Court said: "It is not a law purporting to forbid the importation, manufacture, sale and use of intoxicating liquors as articles detrimental to the welfare of the State and to the health of the inhabitants, and hence it is not within the scope and operation of the Act of Congress of August, 1890." We cannot believe the Court meant by this to hold that only a prohibitory law would be within the Wilson Act. Especially is this true, when we read further in the opinion: "The question whether a given State law is a lawful exercise of the police power is still open, and must remain open to this Court. Such a law may forbid entirely the manufacture and sale of intoxicating liquors, and be valid; *or it may provide equal regulations for the inspection and sale of all domestic and imported liquors, and be valid.* But the State cannot, under the Congressional legislation referred to, establish a system which, in effect, discriminates between interstate and domestic commerce in commodities to make and use which are admitted to be lawful." The doctrine announced then, was *uniformity of regulation* and not *prohibition*, as a test of validity. This is the principle for which we contend, and it affords no authority for the position taken by the Circuit Court.

Unless it can be shown that the Dispensary law, in forbidding the sale of liquors by non-resident dealers, discriminates against

the citizens and products of other States in favor of citizens and products of South Carolina, it must be sustained. The only discrimination found by the Circuit Court in the present Act is referred to as follows: "But whilst it is true that some of the discriminating features are now removed from the Dispensary—features admitted to be fatal to its constitutionality—one, at least, still remains. The markets of this State are closed to the producers in other States. *Minnesota* v. *Barber*, 136 U. S., 326. They are closed, it is true, to the producers in this State, but the latter may be under the control of the laws of commerce within the State. The former are protected by the interstate commerce law. It is no justification that laws in conflict with interstate commerce press equally on the citizens and the stranger. *Minnesota* v. *Barber*." (Transcript of Record, folio 55.)

If we were dealing with some commodity other than intoxicating liquors, the case of *Minnesota* v. *Barber* might have some reasonable application. It is true, the Court in that case said: "A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute." In applying this to the case at bar, the Circuit Court, evidently, overlooked the Wilson Act, the very purpose of which was to subject interstate and domestic commerce in liquors to the same restrictions. To this extent the Wilson Act differentiates intoxicating liquor from all other articles of commerce, and expressly takes liquor out of the principle announced in *Minnesota* v. *Barber*, just quoted. Referring to that Act, this Court in *Scott* v. *Donald* said: "That law was not intended to confer upon any State the power to discriminate injuriously against the products of other States in articles whose manufacture and use are not forbidden, and which are, therefore, the subjects of legitimate commerce. When that law provided that 'all fermented, distilled or intoxicating liquors transported into any State or Territory, remaining therein for use, consumption, sale or storage therein, should upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police power, to the same extent and in the same manner as though such liquids

or liquors had been produced in such State or Territory, and should not be exempt therefrom by reason of being introduced therein in original packages or otherwise,' evidently equality or uniformity of treatment under State laws was intended."

"*Equality or uniformity of treatment under State laws was intended.*"

The Circuit Court says one discriminating feature in the Dispensary law remains, to wit: "The markets of the State are closed to the producers in other States," and in the very next sentence, "They are closed, it is true, to the producers in this State." Pray, where is the discrimination? Then, if the doctrine of *Minnesota* v. *Barber* can not be applied to this case without ignoring the Wilson Act or adjudicating it out of existence, how is the conclusion of the Circuit Court reached?

We challenge the counsel on the other side to point out any section in the present Dispensary Law that discriminates directly or indirectly against the producer of liquors in another State. In all of these hearings much has been said about the law being discriminating "in its effect." Glittering generalities have been largely indulged in, but no particular section in the present law has been designated upon which to condemn it. Neither has it been fairly shown how the reasonable effect of the law, as a whole, is to discriminate against any non-resident producer. They say, "the markets of the State are closed to him." Are they not closed to the resident producer also? They say they "can sell their products to the State Board of Control only." Can the resident producer do more? They say if the State Board refuses to buy their goods, they have no market in South Carolina. Is not the resident producer in the same condition?

In the argument of *Scott* v. *Donald* in this Court the counsel on the other side said South Carolina had enacted a policy of "South Carolina liquor for South Carolinians," and that one purpose of the Dispensary law was to develop the liquor industries of the State by selling their product to the exclusion of the products of other States. He has repeated the statement many times since, and will probably do so here. This is like many other sweeping statements that have been made in these proceedings. It is an effort to create a false issue to bolster the un-

tenable position he occupies. The fact is, that less than twelve per cent. of the liquor bought and sold by the State Board of Control is the product of South Carolina. The report of the Board shows that from June 30, 1896, to June 30, 1897, the total liquor purchases of the State amounted to $938,558.69, of which only $68,864.85 was paid for liquors manufactured in South Carolina. The report of the United States Commissioner of Internal Revenue for the same period shows that the total liquor product of South Carolina was only 57,548 gallons. There are within the State about twenty-seven distilleries. There are two breweries which, according to the report of the Revenue Commissioner, had an output in 1896–97 of 8,400 barrels of beer. Only this small quantity of liquor being produced in South Carolina, the State Dispensary must look elsewhere for its supplies. The policy is not "South Carolina liquor for South Carolinians," but rather *pure liquor for South Carolinians, sold under such restrictions as will reduce to a minimum the evil.* The State Board of Control purchases in the open markets of the world, their only restriction being that they must purchase and furnish to County Dispensers liquors that are pure and free from poisonous, hurtful or deleterious matter. The law excludes no dealer or class of dealers. All are allowed to compete for the business, and those who fail to secure it, by reason of inferior goods or higher prices, can find nothing in the Act of which to complain. Suppose the non-resident dealer who claims that he is discriminated against, because the State Board does not purchase his liquors, should go into any State where a License Board exists, whose province and duty it is to say who shall sell liquor and where it shall be sold, and, upon applying for license, the License Board should determine that he was not a suitable person to be licensed, that his liquors were inferior and injurious, or that the place where he proposed to sell was not a place where liquors should be sold, would he not be excluded from that market? Such is the condition in a number of States. Are their laws invalid? Does the exercise of a discretion by which a foreign product may be affected invalidate any system of regulation? Discretion must be lodged somewhere, and so long as that discretion is exercised fairly as to both foreign and domestic

products, it must be sustained, whether exercised by a License Board granting or refusing license, or by a Board of Control with purchasing and dispensing power. This was conceded by the counsel on the other side in a recent argument before the Judiciary Committee of the House of Representatives, when he said: "My position is this: That if the State law provides a system of absolute prohibition—none sold at all—it is valid (!); and if the State law provides a system of equal privileges, equal regulations for the sale of all domestic and imported liquor, it is equally valid, whether the State makes a general provision of law or takes the control of liquor to herself and makes herself the sole monopolist." We trust the counsel will adhere to the same proposition here, and, assuming that he will, we challenge him to point out to the Court any way in which the Dispensary law fails to provide "a system of equal privileges, equal regulations for the sale of all domestic and imported liquors." He has failed to do so heretofore, and his Honor, the Circuit Judge, has not done so.

The only real discrimination now existing in this matter is one created by the decision of the Circuit Court itself as a result of this case and those immediately following it. The effect of the Circuit Court's decision is to give to a non-resident the right to sell liquors in South Carolina in so-called "original packages" and deny that right to citizens of the State. The non-resident may come into the State and store a stock of liquors and expose them for sale and sell them at a regular place of business. Many such places are now in operation. It goes even further, and permits a citizen of South Carolina, as agent for any non resident dealer, to sell unmolested, while his neighbor cannot do so. The appointment as agent of a non-resident liquor dealer confers on any citizen a right superior to the laws of his State. As an individual, he is bound by the criminal statutes of the State, and for a violation of them may be convicted and punished, but as agent for the non-resident liquor dealer, he is exempt from indictment and may disregard, with impunity, the law that binds his neighbor. Citizens of other States and their agents are thus given rights in South Carolina that are not exercised by South Carolinians, and to this end the aid of a Court of Equity was

successfully invoked. So much as to discrimination between citizens.

Now as to products: The liquor products of South Carolina must be sold to the State or find a market elsewhere. No manufacturer of liquor in this State can sell directly to the consumer here. But the liquor products of other States may come into South Carolina and be sold directly to the consumer in quantities of one-half pint, one pint, and the like, and the same law that prohibits the sale by a resident manufacturer is powerless to prevent the importation and sale of the foreign product.

According to the theory of the Circuit Court, the former are "under the control of the laws of commerce within the State," while the latter "are protected by the interstate commerce law." The Circuit Court has given us a system of discrimination against the citizens and products of South Carolina in favor of the citizens and products of other States. In the name of reason, I ask, where is the Wilson Act? Where is the "equality or uniformity of treatment" which this Court says was intended by that Act?

The theory upon which the Circuit Court established this condition of affairs is evidently new to that Court. Such views do not seem to have been entertained by his Honor, the Circuit Judge, until after the decision in *Scott* v. *Donald*, and they were announced for the first time in the case now under consideration. In the case of *Ex parte Loeb*, 72 Fed. Rep., 658, the Circuit Court said: "There can be no doubt that the State, under its police power, can control and regulate the liquor traffic, either by prohibiting it altogether or by permitting its sale only on certain prescribed limitations and conditions. Nor can this power be controlled by any law of the United States. The importation of liquor in this State, and its sale in this State, either to importer or to any one else, come within this provision. And as the State has forbidden it, such sale is illegal and void. So, even, when one imports for his own use and consumption, if the packages come C. O. D., or to order notify, or under a bill of lading attached to a draft, or in any other way by which the price is paid on or as a condition of the delivery of the goods in this State, this is unlawful, and the sale thus consummated is void."

In *Ex parte Gonzales*, 76 Fed. Rep., 559, the Circuit Court said: "In the opinion just filed (76 Fed., 554), it has been shown that liquor imported from another State, or from a foreign country, for the personal use of the importer, is protected by the interstate commerce law, and that this protection is continued over the importation after its arrival, so long as this personal use and consumption continues. If, however, this personal use and consumption cease, the protection ceases also. In the present case, Mr. A. E. Gonzales imported for his own use two packages. One continued in his own use and for his own consumption. The other did not, he gave it away. The police law of this State forbids this. Indeed, if packages could be imported by any one for his own use, and, after arrival, could be given to others, there could be no limit to the number so imported by one person, or to that of the recipients after they were imported. The protection of the interstate commerce law is a personal privilege. It can not be transferred to another person, and give to him the protection given to the importer, only because he actually imported the goods.

This view was reiterated by the Circuit Court in charging the jury in the case of *Beckroge* v. *Harling et al.*, tried in 1897. His Honor said: "Another thing, gentlemen, I have forgotten. The learned Attorney General has insisted that this liquor was not for the personal use of Beckroge, because he bought it for his wedding feast, and he has quoted as authority the case of Gonzales, in Columbia, which, he thinks, states his position. He is in error. I held in the Gonzales case that it was the privilege of every citizen to import liquor for his own personal use. He had no right to import for the personal use of others. In that case he imported two five-gallon demijohns of whiskey, and he gave one to his brother, but he had no right to import that for his brother.

"What do you mean by personal use? If the foreman of the jury were to import a case of claret and put it on his table for his use and that of his family and guests, is not that his personal use? And if Beckroge bought these liquors for himself, his bride and his guests, I think that he can be said to have bought it for his own personal use. The distinction between the two

cases was this: Gonzales brought in two packages, one for his own personal use and the other he sent to his brother. I held that it was a personal privilege that he could only exercise for himself. The true meaning of personal use is this: He must not import it for the purpose of selling it or parting with it to anybody else in violation of the laws of the State, but so long as he treats it as his personal liquor, it is no departure from the personal use to invite his friends in enjoying it any more than to take a friend up to your sideboard and give that friend a glass of whiskey from your decanter, would not be a case of personal use."

His Honor further said, in charging the jury in *Beckroge* v. *Harling et al.*: "In view of one of the requests to charge, I will say here that it makes no difference whether the importation was by a citizen of the United States other than the State of South Carolina, or by a citizen of the State of South Carolina, because if it should turn out that the citizen of South Carolina has the right to import liquors into the State of South Carolina, by the Constitution of the United States, every citizen of the United States is clothed with exactly the same privilege that a citizen of the State of South Carolina is clothed with." After holding that "every citizen of the United States is clothed with exactly the same privilege that a citizen of the State of South Carolina is clothed with," we find the decisions of the same Court giving to citizens of other States rights and powers in South Carolina that are denied to citizens of South Carolina. With the greatest respect, we say the interstate commerce law, as construed by his Honor, is destructive of equality and subversive of reason, if this be the consequence of it.

A detailed review of all the cases discussing the relations between the police power of the States and the interstate commerce clause of the Federal Constitution is useless here. This Court has repeatedly reviewed the earlier cases and deduced from them certain fixed principles by which we must be guided. *Plumley* v. *Massachusetts*, 155 U. S., 471; *Emert* v. *Missouri*, 156 U. S., 296; and *Scott* v. *Donald*, 165 U. S., 58, furnish recent discussions of the question.

The principles announced in these cases, together with the

Act of Congress of August, 1890, must control this case. His Honor, the Circuit Judge, seems to have relied on his construction of the decision of this Court in *Scott* v. *Donald*. In the case of *Moore* v. *Bahr*, 82 Fed. Rep., 20, the Circuit Court said: "In *Donald v. Scott*, 67 Fed. Rep., 854, a full discussion of the relations between the Dispensary Acts and the law of interstate commerce was had, and the decision was reached that, under the protection of the interstate commerce law, any resident of this State could, notwithstanding the Dispensary Acts, import liquors for his own use and consumption. This decision has been sustained by the Supreme Court of the United States in *Scott* v. *Donald*, 165 U. S., 58, 17 Sup. Ct., 262. In the *Vandercook* case (recently heard and decided in this Court), 80 Fed. Rep., 786, following the Supreme Court in *Scott* v. *Donald*, it was held that a producer of wines and other liquors in California had a right to import and sell in this State his products in original packages."

We respectfully repeat our proposition that the Circuit Court did not follow the Supreme Court in *Scott* v. *Donald*.

Principle announced by Supreme Court in *Scott* v. *Donald:*

"The question whether a given State law is a lawful exercise of the police power is still open, and must remain open, to this Court. Such a law may forbid entirely the manufacture and sale of intoxicating liquors, and be valid; or it may provide equal regulations for the inspection and sale of all domestic and imported liquors, and be valid."

Principle announced by Circuit Court in *Vandercook* v. *Vance:*

"If all alcoholic liquors, by whomsoever held, are declared contraband, they cease to belong to commerce and are within the jurisdiction of the police power; but so long as their manufacture, purchase or sale, or their use as a beverage in any form or by any person are recognized, they belong to commerce and are without the domain of the police power."

The case of *Scott* v. *Donald* having been instituted by a citizen of South Carolina to enforce his right to import liquors for his personal use, this Court said, after reviewing a number of cases: "In the light of these cases, the Act of South Carolina of January 2, 1895, must, *as to those of its provisions which affect the plaintiff in the present suits*, stand condemned. So its application was limited. But, even considering the principle of the decision as relating to the rights of non-resident liquor producers, it goes no further, and could, under the Wilson Act, go no fur-

ther, than to hold that uniformity of treatment is demanded. Under that decision, although the State law recognizes the manufacture, purchase, and sale of intoxicating liquors, and their use as a beverage, if it provides equal regulations for the sale of domestic and imported liquors, it is valid. If "equality or uniformity of treatment" of domestic and foreign liquors is established, the terms of the Wilson Act are complied with, and the law must be sustained, for the very purpose and effect of that Act is to require only such uniformity. The State is thus left to enact, as to liquor, any system she pleases, so long as it applies alike to domestic and imported products. That the one "may be under the control of the laws of commerce within the State," while the other "are protected by the interstate commerce law," is a proposition entirely subversive of the theory of the Wilson Act.

The present Dispensary Law discriminates against nobody, either in terms or by natural operation, and is, therefore, a valid exercise of the police power, binding on the wine seller of California as it is on the citizen of South Carolina.

III.

We submit that the State may prohibit the storing and keeping in possession for sale within her borders of alcoholic liquors in original packages or otherwise, and that such prohibition is a valid exercise of her police power, and is not a regulation of interstate commerce.

That the character of intoxicating liquors warrants the prohibition of their storing, is practically without question. In the case of *State* v. *Winters et al.* (Kan.), 25 Pac. Rep., 235, the Court said: "It has seldom, if ever, been considered in any civilized country that the same freedom with respect to the traffic in and the use of intoxicating liquors should be allowed, as is freely permitted with respect to nearly all the other kinds of property subject to traffic or use. Intoxicating liquors are never considered as coming within the category of the necessaries of life, nor even as good or wholesome food or drink, or proper articles for general consumption. They are never considered like wheat or corn, or boots or shoes, or any of the other harm-

less articles of traffic of use which need no regulation nor restriction. They are considered almost as outlaws. In their unrestricted sale and use, they are pernicious, deleterious, baneful. They operate as tempters and seducers, alluring people into vice and crime, and constitute a perpetual menace and threat against the peace and quiet, good order and welfare of society. Their proper classification would rather be with such dangerous articles as dynamite, nitroglycerine, venomous reptiles, dangerous animals, poisons, articles containing the germs of infectious diseases, and 'infernal machines,' than with any of the harmless or innocent articles of commerce. Hence, in all civilized countries, they are considered as the proper subject of regulation, restriction, and, to some extent, prohibition; and all this has generally been considered as coming within the proper scope of the police power of the several states or governments."

In *Leisy* v. *Harden*, 135 U. S., 100, this Court held that: "The right of importation of ardent spirits, distilled liquors, ale and beer from one State into another, includes, by necessary implication, the right of sale in the original packages at the place where the importation terminates." See *Lyng* v. *Michigan*, 135 U. S., 166.

However, it has never been held that the right to import and sell in consequence of importation implies the right to store and offer for sale at a regular place of business. The moment the liquors are stored and exposed for sale they cease to be articles of commerce, the jurisdiction of the Federal Court over them terminates, and they become subject to State laws, as a part of the common mass of property in the State.

In the case of *Pittsburg Coal Co.* v. *Bates*, 156 U. S., 588, the Court said: "So long as Congress does not pass any law to regulate commerce among the several States, it thereby indicates its will that commerce shall be free, and any regulation upon the subject by the States is repugnant to such freedom. Thus, as observed Mr. Justice Strong: 'It seems hardly necessary to argue at length that, unless the statute can be justified as a legitimate exercise of the police power of the State, it is an usurpation of the power vested exclusively in Congress. It is a plain regulation of interstate commerce, a regulation extending to prohibi-

tion. Whatever may be the power of a State over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations.'

"Such being the recognized law, the question arose before the Court in the case of *Brown* v. *Houston*, whether the assessment of the tax upon the coal in question in the barges afloat amounted to any interference with or restriction upon the free introduction of the plaintiff's coal, from the State of Pennsylvania to the State of Louisiana. In other words, whether the tax amounted to a regulation or restriction upon commerce of the States, or only to the exercise of local administration under the general taxing power, which, though it may incidentally affect the subjects of commerce, is entirely within the power of the State until Congress shall see fit to interfere, and make express regulations on the subject, and that is one of the precise questions in the present case. And it was held that as to the character and mode of the assessment, it was not a tax imposed upon the coal as a foreign product, or as the product of another State than Louisiana, nor a tax imposed by reason of the coal being imported or brought into Louisiana, nor a tax imposed whilst it was in a state of transit through that State to some other place of destination. It was imposed after the coal had arrived at its place of destination and was put up for sale. The coal had come to its place of rest for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year, or two years, or only for a day. It had become a part of the general mass of property in the State, and as such it was taxable for the current year, as all other property in the city of New Orleans was taxable. Under the law it could not be taxed again until the following year. It was subjected to no discrimination in favor of goods which were the products of Louisiana. It was treated exactly in the same manner as such goods were treated.

"And the Court held that it could not be seriously contended—at least, in the absence of any congressional legislation to the contrary—that goods which are the product of other States are to be free from taxation in the State to which they might be

carried for use or sale. And it may be added, that the correct rule is for the assessor or tax collector to assess all property found within his jurisdiction, being there for the purpose of remaining till used or sold, and constituting part of the great mass of the general property of the country—provided, always, that the assessment does not discriminate between the products of the different States.

"And the Court further observed that it saw no conflict in that case, either in the law itself or in the proceedings which had been had under it and sustained by the State tribunals, nor any conflict with the general rule that a State can not pass a law which shall interfere with the unrestricted freedom of commerce between the States.

"The decision of the Court in *Brown* v. *Houston*, thus rendered, seems to be conclusive of the case now before the Court. The property in this case, as in that, still belongs to the original owners in Pennsylvania, but is brought on the navigable waters of the United States in boats and barges to Louisiana for purposes of sale, and is subject to taxation and sale as any other property of the citizens of the United States is subject when it becomes incorporated into the bulk of the property of the country, unless there be some special exemption set forth why it should not be thus taxed and sold, of which there are none here."

See *Brown* v. *Houston*, 114 U. S., 632.

The police power and the taxing power are in many respects identical, and they are, in all respects, subject alike to the limitations of the Federal Constitution as to interstate commerce.

See Prentice on Police Powers, p. 361.

Cooley on Taxation, p. 94, says: "The Federal Constitution also provides that Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

"The Constitution, and the laws and treaties made in pursuance thereof, being supreme over all the States, any exercise of State power, whether by taxation or otherwise, in conflict therewith, must be void. In most imports this power over commerce is exclusive to the extent to which it is conferred, so that a regulation by a State of foreign or interstate commerce would be void.

"A tax distinctly laid on the commerce that comes under the regulation of Congress is void, even though Congress has refrained from legislating on the subject. * * * An importer's sales are exempt from State taxation, because he purchases, by the payment of the duty, a right to dispose of the merchandise as well as to bring it into the country; and the tax, if it were admissible, would intercept the import as an import on the way to becoming incorporated with the general mass of property, and would deny it the privilege of becoming so incorporated until it should have contributed to the revenue of the State. Property which constitutes a part of the general mass of property of a State is taxable, though it may have been, or may be designed to be, the subject of commerce, under congressional regulation. We have seen already that goods imported under the laws of Congress may be taxed by the States with other property when they have passed from the importer's hands, or have become a part of the general property of the State by the breaking up of the packages."

Mr. Cooley further says, on page 586: "There are some cases in which levies are made and collected under the general designation of taxes, or under some term employed in revenue laws to indicate a particular class of taxes, where the imposition of the burden may fairly be referred to some other authority than to that branch of the sovereign power of the State under which the public revenues are apportioned and collected. The reason is, that the imposition has not for its object the raising of revenue, but looks rather to the regulation of relative rights, privileges and duties as between individuals, to the conservation of order in the political society, to the encouragement of industry, and the discouragement of pernicious employments. Legislation for these purposes, it would seem proper to look upon as being made in the exercise of that authority which is inherent in every sovereignty, to make all such rules and regulations as are needful to secure and preserve the public order, and to protect each individual in the enjoyment of his own rights and privileges by requiring the observance of rules of order, fairness and good neighborhood, by all around him. *This manifestation of the sovereign authority is usually spoken of as the police power.*"

In the case of *Eilenbecker* v. *Plymouth County*, 134 U. S., 31, this Court sustained a statute of the State of Iowa, providing substantially the same method as section 22 of the Dispensary Act for abating as a nuisance places where alcoholic liquors are are stored and kept for sale.

Section 1543 of the Code of Iowa, as amended by c. 143 of the Acts of the twentieth General Assembly, is as follows: "Section 1543. In case of violation of the provisions of either of the three preceding sections or of section 1525 of this chapter, the building or erection of whatever kind, or the ground itself in or upon which such unlawful manufacture or sale, or keeping with intent to sell, use or give away, of any intoxicating liquors, is carried on or continued or exists, and the furniture, fixture, vessels, and contents, is hereby declared a nuisance, and shall be abated as hereinafter provided, and whoever shall erect or establish, or continue, or use any building, erection or place for any of the purposes prohibited in said section, shall be deemed guilty of a nuisance, and may be prosecuted and punished accordingly, and upon conviction shall pay a fine of not exceeding one thousand dollars and costs of prosecution, and stand committed until the fine and costs are paid; and the provisions of chapter 47, title 25, of this Code shall not be applicable to persons committed under this section. Any citizen of the country where such nuisance exists, or is kept or maintained, *may maintain an action in equity to abate and perpetually enjoin* the same, and any person violating the terms of an injunction granted in such proceeding, shall be punished as for contempt by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment in the discretion of the Court."

The Court said: "If the objection to the statute is that it authorizes a proceeding in the nature of a suit in equity to suppress the manufacture and sale of intoxicating liquors, which are by law prohibited, and to abate the nuisance which the statute declares such acts to be, wherever carried on, we respond that, so far as at present advised, it appears to us that all the powers of a Court, whether at common law or in chancery, may be called into operation by a legislative body for the purpose of

suppressing this objectionable traffic; and we know of no hindrance in the Constitution of the United States to the form of proceedings, or to the Court in which this remedy shall be had. Certainly, it seems to us to be quite as wise to use the processes of the law and the powers of the Court to prevent the evil, as to punish the offense as a crime after it has been committed."

In case of *Commonwealth* v. *Schollenberger*, 156 Penn., 201, held: "A non-resident who comes into the State to embark in business is in the same situation as that of a resident, and the business done at his store is State and not interstate commerce." The Judge delivering the opinion said: "Interstate commerce does not necessarily depend upon the origin of the goods; or, rather, all men who buy and sell foreign merchandise are not necessarily engaged in interstate commerce. If it was otherwise, all merchants would be superior to State laws, for all deal to some extent in goods made in other States and countries. One who keeps a stock of goods in store for the inspection of customers, and sells from this stock to actual consumers, is a local dealer. His business is intra-State, not inter-State."

In *City of Indianapolis* v. *Beiler*, 138 Ind., 36, held: "Beer being a fermented intoxicating liquor or liquid, it follows that the depots or agencies of non-resident breweries, in which depots or agencies such beer is temporarily stored, until the same are disposed of, are subject to the operation and effect of the laws of the State, enacted in the exercise of its police power, to the same extent and in the same manner as though such liquor or liquids were produced in this State."

We concur in the views of the Supreme Court of Pennsylvania, expressed in the case of *Commonwealth* v. *Schollenberger*, *supra*, that, "One who keeps a stock of goods in store for the inspection of consumers, and sells from his stock to actual consumers, is a local dealer." The fact that he is a non-resident, or the agent of a non-resident, cannot affect the character of his business. Running a regular store where liquors are kept and sold in half-pints, pints, quarts, etc., to the consumer, constitutes a local business, with no element of interstate commerce in it. If the liquor so stored and sold was at one time the subject of interstate commerce, it lost that character when the dealer offered

it for sale over his counter. As was said by this Court in *Pittsburg Coal Company* v. *Bates*, referring to the coal there in question, it "had come to its place of rest for final disposal or use and was a commodity in the market." "It might continue in that condition for a year or two years, or only for a day." "It had become a part of the general mass of property in the State."

If attaching to the wharf in New Orleans a barge load of coal, imported in that form from another State, and there offering it for sale, made it "a part of general mass of property in the State," *a fortiori*—when liquors in pints and quarts, as imported, are stored and offered for sale in South Carolina, they at once become "a part of the general mass of property in the State," and are subject to State laws. Suppose a citizen of South Carolina should thus store liquors in the State. It would, immediately, be liable to seizure and confiscation whether it was produced in South Carolina or elsewhere. By what reasoning may we fairly conclude that a citizen of another State, or his agent, may store liquor here, and have exemption from the law that operates upon the citizen and product of South Carolina?

If the injunction placed upon the State by the Act of Congress is, that imported liquors shall, upon arrival in the State, be given equality of treatment with domestic liquors, how can this Court sustain a decision under which a non-resident imports liquors into South Carolina, and there stores and sells them regardless of all law of the State by which citizens are prohibited from doing so? By what strange magic may we transform the store where, from day to day, the agent of a non-resident liquor dealor sells intoxicating liquors by the half pint, into a great agency of interstate commerce, operated under the guardian care of the Federal Government? The police power of the State is a myth, if it may not be exercised to prevent the citizen and the stranger alike from storing their liquors within her limits, when, under the Act of Congress, she is told that upon their arrival, imported liquors shall be subject to her police laws to the same extent as though such liquors had been produced within her borders.

IV.

Sales of intoxicating liquor in quantities of one-half pint, one pint, and the like, are not sales in "original packages," within the meaning of the laws of commerce.

We submit the following propositions:

I. Any package containing five gallons or more, when imported by a manufacturer or rectifier and wholesale dealer, to be an original package, within the meaning of the law, must bear the stamps and brands required by the revenue laws of the United States.

II. Any package containing less than five gallons, put up by a manufacturer or rectifier and wholesale dealer, is an original package, within the meaning of the commerce laws, without stamps and brands, so long as it remains in exactly the condition in which it is imported, unless it is evidently adapted for and intended to meet the requirements of an unlawful retail trade.

III. When liquors are put up in bottles, and a number of bottles are packed or placed in a box, basket, crate or case, and thus shipped into the State, the entire box, basket, crate or case is the original package.

IV. If bottles are shipped in cars, packed in straw or otherwise, for obvious purpose of retail by the bottle, each bottle can not be considered an original package and sold as such.

These propositions are sustained by both State and Federal Courts. Section 3287 of R. S. of U. S. indicates what must be an original package taken from a warehouse: First. There must be on it a stamp on which shall be engraved the number of proof gallons, and that the tax has been paid. Second. There must be cut or burnt on each cask the name of the distiller, the district, the date of the tax, number of proof gallons, and the number of the stamp.

Section 3289 provides: "All distilled spirits found in any cask containing five gallons or more, without having thereon each mark or stamp required therefor by law, shall be forfeited to the United States."

As to liquors imported from a foreign country into this country, there is no such requirement. There is a distinction, then,

between an original package imported from a foreign country and one from one of the States of the Union.

As to rectifiers, section 3320 seems to define what shall be an original package. It requires that all packages of rectified spirits, containing five gallons or more, filled for shipment, sale or delivery, must be inspected by a gauger, who shall place thereon an engraved stamp signed by the Collector of the District and the said gauger, which shall state the date when affixed and the number of proof gallons, as follows: "Stamp for rectified spirits, No. —; issued by ——, Collector —— District; State of ———; Rectifier of Spirits in the —— District; State of ———, 18—; —— proof gallons," and signed by gauger.

Wholesale dealers and rectifiers are also required to keep a book showing from whom they bought whiskey, and all the particulars about the whiskey rectified by them, and that they have been inspected and marked and forwarded, as required by law.

A kindred question has recently been considered in the case of the *State* v. *Geotze*, S. E. R. for May 25, 1897, W. Va., p. 225, and the Court held: "When cigarettes are manufactured in a State and placed in paper boxes for commerce, transportation, and sale, and such boxes are provided with a paper label giving the name of the cigarettes, the caution notice, the number of the factory, the number of the revenue district, the name of the State in which they are manufactured, and the proper internal revenue stamp duly cancelled and pasted across the end of such package, so as to seal the same in accordance with the Act of Congress and the internal revenue laws governing the package, shipment, and sale of cigarettes, such paper box must be regarded as an original package, and its character will not be changed by its being placed with other boxes of the same kind in a wooden box for shipment."

In this case the Court said: "It is disclosed by the testimony and admissions of counsel that the defendant purchased the cigarettes in question from the American Tobacco Company, a New Jersey corporation, doing business in New York, and that said cigarettes were packed in boxes, each containing ten, which boxes were properly endorsed and stamped as required by law,

and that said paper boxes, for convenience of shipment, were packed in a wooden box, and shipped therein directly from the American Tobacco Company, in New York, to the defendant, in the city of Wheeling, and after the wooden box was opened, said cigarettes were sold in the paper boxes as they came from the factory, each containing ten, and not one cigarette at a time, as other cigars are sold by retail. In other words, they were sold by the box, and not by the cigarette. Were they sold by the original package, or should the defendant have sold the entire contents of the wooden box, without opening the same, in order to constitute the sale by the original package? We cannot say the wooden box constituted the original package, any more than we would say, if these paper boxes had been wrapped in thick paper and tied with twine, or packed in a barrel, for convenience in shipping, that the paper parcel or the barrel should be considered the original package. As the cigarettes came from the hands of the manufacturer, they were in paper boxes, each containing ten, for the convenience of their customers; and whether they sold one box or a thousand, these paper boxes must be regarded as original packages. These packages, as before stated, had upon them the label giving the name of the cigarettes, the caution notice, the number of the factory, the number of the revenue district, the name of the State in which they were manufactured, the name of the manufacturer, and the internal revenue stamp for ten cigarettes, duly canceled, pasted across the end of each package, so as to seal the same in accordance with the requirements of the Act of Congress and the internal revenue laws governing the packing, shipment, and sale of cigarettes, all of which is required by law to constitute a package of cigarettes ready for shipment and sale; and, when these things are done, the package may be regarded as an original package. None of this endorsement or stamping is required to be placed upon the pine box or barrel or paper parcels in which these packages might be shipped, and opening the box, barrel or parcel for the purpose of taking out the paper boxes, cannot be considered as breaking the original package. These packages are, moreover, required to be put up in this particular manner by the Act of Congress, and a penalty is prescribed for a failure so to do. Rev.

St., 3392, contains the following provisions, to wit: "That every manufacturer of cigarettes shall put up all the cigarettes that he either manufactures or has made for him, and sells or removes for consumption or use, in packages or parcels, containing ten, twenty, fifty, or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the stamp thereon, and shall properly cancel the same prior to such sale or removal for consumption or use, under such regulations as the Commissioner of Internal Revenue shall prescribe." And section 3381 of said Revised Statutes, on the same subject, provides that "he shall neither sell or offer for sale any tobacco, snuff or cigars, except in original or full packages, as the law requires the same to be prepared and put up by the manufacturers for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff and cigars as bear the manufacturer's label or caution notice, and his legal marks and brands and genuine internal revenue stamps which had never been used."

The same doctrine was announced by the Federal Court *In re Minor*, 69 Fed. Rep., 235, and *State* v. *McGregor*, 76 Fed. Rep., 957. All of these cigarette cases were decided upon the principle that the United States Statute determines what is an original package of cigarettes. This is evident from the letter of the Commissioner of Internal Revenue, copy of which is set forth in the opinion of the Court, in the case of *State* v. *McGregor*, 76 Fed. Rep., 958, which is in part as follows: "In reply to your inquiry of April 3d, submitting a sample package of cigarettes, bearing thereon the internal revenue stamp, the printed marks and caution label, and inquiring as to the necessity for a re-inclosing in an additional covering of paper, wood or other material in placing the same upon the market, you are notified that said package, being a statutory quantity, and properly stamped and cancelled, and bearing thereon the caution label and number of the factory, district and State, and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package, as contemplated by the existing law and regulations." Not so with intoxicating liquors, and in determining what is an original package of intoxicating liquors our conclusion must be based

not upon statute, but upon common usage and custom prevailing in commerce, as construed by the various Courts of the country.

In the case of *State* v. *Keith et al.*, 91 Ala., the question what constitutes an original package is considered. The Court said: "In Rion's case the liquor was shipped by Lowenthal & Co., wholesale and retail dealers, residing and doing business in Nashville, Tenn., in half-pint, pint, and quart bottles. The bottles were separately wrapped in tissue paper, each labelled 'original package,' with the name of the importer and shipper, in an open box, with hay laid between them, each box marked with the number of bottles, and three sizes contained therein. From the bill of lading put in evidence, it appeared that the box contained 1,075 bottles and twenty-five jugs of liquor, and that shipped at the same time were twenty casks containing bottles of beer, and three casks containing bottles of ale; this was done to facilitate the shipment. Rion sold the whiskey, as the agent of the importer, by the single bottle, wrapped and labelled in the manner stated. On these facts, the question arises, whether the bottles, having been placed in an open box, each bottle or the box containing them constituted an original package. The small size of the packages, if the bottles be otherwise considered original packages, should have no bearing upon the answer to this question. As said *In re Beine*, 42 Fed. Rep., 545: 'The importer may determine, in the absence of a regulation by Congress, the form and size of the packages he puts up for export. We do not controvert the proposition that, under the decision of the Supreme Court, intoxicating liquors may be shipped in single bottles as distinct and separate packages, and that the importer in such case has the right to sell a single bottle as in the original package.' Conceding this, was the liquor sold by Rion so shipped? *In re Beine*, *supra*, sheds no light upon this question. In that case single bottles of beer and whiskey, packed or sealed, or nailed up in boxes of pasteboard or wood, were shipped and sold in that shape. The boxes containing one bottle were not packed in any other box. In this case the bottles, separately wrapped in paper, were shipped in a box and sold singly. Merely labelling each bottle 'original package' did not make it

one, if it was not really an original package. The term to pack, in its ordinary signification, especially when used in reference to carriage, means to place together and prepare for transportation, as to make up a bundle or bale, or box or other receptacle; they do not form as many separate and distinct packages as there are articles, though they may be wrapped separately. The case or box or bale in which separate articles are placed together for transportation constitutes the original package in the commercial sense. It appears from the bill of lading that the transportation was not of bottles as distinct and separate packages, but of a specified number of bottles of liquor contained in boxes, each box indicating by mark thereon the number and sizes of the bottles contained therein. Had the boxes been covered or nailed or otherwise secured, it would not have admitted of serious question that they formed the original package. The purpose of securing a box with a fastened cover is the protection of its contents against loss by theft or otherwise, and for convenience in handling. A distinction between a box securely covered and one uncovered, in respect to its character and status as an original package, is a distinction without a difference, unsupported by principle or reason. The mode of shipment adopted was manifestly a mere contrivance to evade the consequence of the violation of the State prohibition law, under the pretext of interstate commerce, which does not entitle appellant to the protection afforded by the Federal Constitution to importers and sellers of original packages. The evidence in Rion's case fails to show an importation and sale coming within the principle decided in *Leisey* v. *Harden*, *supra*."

In *Commonwealth* v. *Bishman*, 21 Atlantic Reporter, 12, the Court said: "Carson was the agent of P. Welty & Co., Wheeling, W. Va.; that as such he leased the room of defendant, and therein, assisted by defendant, sold liquor in pint and quart bottles, which was consigned to him by P. Welty & Co. as their agent. Each bottle was enclosed in a pasteboard box, sealed with a strip of paper, pasted across the lid and stamped with the name of the firm. These packages were shipped in boxes and barrels to Carson, who, with defendant's assistance, unpacked them when they arrived, and placed the pasteboard packages on his shelves. * * *

The defendant was engaged in selling liquor at retail, and his claim that he was selling only by original packages was little better than a burlesque."

In case of *State* v. *Chapman* (S. D.), 47 N. W. R., 411, the Court said: "In case of *Leisey* v. *Harden*, the plaintiffs were citizens of Illinois, and doing business as brewers in Peoria, of that State. They shipped 122 quarter barrels of beer, 171 one-eighth barrels of beer, to John Leisey, Keokuk. He received the same and sold it in the original keg or sealed case, as manufactured and put up by said Leisey & Co., and imported by them into the State of Iowa. No kegs or cases sold or offered for sale were broken or opened or changed in any particular until sold, and as soon as purchased were removed from the premises. Such being the facts, they come already within the general rule laid down in that case. * * *

"Not so in the case at bar. The testimony shows that liquor and beer were sold by changing the form and condition of the package from that in which it was shipped and received. Bottles were packed in boxes. These bottles were taken from the boxes and displayed and sold separately, without any reference to the packages in which they were shipped. The importer having determined the size and form of the packages he puts up for export, determines the size and form in which they must be sold." See *In re Beine*, 42 Fed. Rep., 546; *In re Harmon*, 43 Fed. Rep., 372.

In the case of *In re Beine*, 42 Fed. Rep., 545, the Court said: "A question was raised in the argument as to whether the smallness of some of the packages sold did not deprive them of the protection given to vendors of original packages. Single bottles of beer and whiskey, packed and sealed or nailed up in boxes made of pasteboard or wood, were shipped and sold in that shape. The boxes containing one bottle were not packed in any other box, but shipped singly and separately as so many distinct and separate packages. It is not perceived why, in the absence of a regulation by Congress, the importer may not determine for himself the form and size of the packages he puts up for export. The idea that small packages of liquor can not be treated as original packages, because they are small, springs from the con-

struction back of it, that liquor in any form, or in any sized package, is not a legitimate subject of commerce. As long as packages of liquor in any form or size may lawfully be sold by importers or their agents in a prohibition State, the size of the package is not of much importance."

In the case of *In re Harmon*, 43 Fed. Rep., 372, the Court said: "The question has been strongly presented by counsel on both sides, and it is urged on the part of the relator that the fact that paper wrappers sealed up around each bottle made a separate package, and as the express company furnished the pine boxes to be returned, they had no other effect. I am satisfied that these were mere subterfuges resorted to by Jordan and the relator to avoid the penalty of the State law, and that it made no difference whether there were paper boxes around each bottle or not; if each was a separate package, within the provisions of the Constitution of the United States, as construed by the Supreme Court of the United States, with the box of wrappers, it was equally so without it. Nor does it make any difference to whom the boxes belonged. These boxes were closely packed together in the boxes by Jordan, the shipper, and in that form shipped to Sardy, and in that way they were kept by relator until sold and taken out one bottle at a time. It was, in other words, a retail saloon. I am satisfied that the whiskey in the box, although in separate bottles, for the convenience of the trade in the retail saloons, was but one package, within the meaning of the interstate commerce clause of the Constitution, as construed by the Supreme Court, and might have been sold together in one sale without breaking the package, and, if this had been done, the vendor would have been protected in making the sale; but this was not done, and he is not entitled to the protection and release as asked in this Court."

A full discussion of what constitutes an original package will be found in the case of *The State* v. *Winters et al.* (Kan.), 25th Pac. Rep., p. 235; the doctrine announced there is in accordance with the position we take.

In the case of *Commonwealth* v. *Schollenberger*, 156 Penn. St., p. 201, it was held (Syll.): "A non-resident who comes into this State to embark in business is in the same situation as that of a

resident, and the business done at his store is State and not interstate commerce.

"An 'original package' is such form and size of package as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce.

"Where a mode of putting up a package is not adapted to meet the requirements of actual interstate commerce, but the requirements of an unlawful intra-state retail trade, the dealer will not be protected on the ground that he is selling an original package."

In the case of *Commonwealth* v. *Paul*, 170 Penn. St., p. 284 (Syll.): "A package devised by a non-resident manufacturer, or put up by him, adapted for sale at retail to individual consumers, such, for example, as a flask of whiskey, or a tub or pail or roll of oleomargarine, and actually sold by him or his agent to the consumer for use as an article of food or drink, in violation of the laws of the State where such sales take place, is not an 'original package' within the meaning of the law relating to interstate commerce; and the punishment of such sales under the police power of the State is not an interference with the powers of Congress, or with the commerce between the States, which is protected by the Constitution of the United States."

We can not express our view of the legality and right of the sale of liquors by non-resident dealers and their agents in quantities of one-half pint, etc., in more apt language than was used by Mr. Justice Williams of the Supreme Court of Pennsylvania, in *Commonwealth* v. *Schollenberger* (*supra*), as follows:

"This case belongs to a rapidly growing class that has already become uncomfortably large and troublesome in this State. The profits to be derived from an unlawful traffic are much larger than those that flow from legitimate trade, provided the unlawful traffic may be pursued without serious interference from the officers of the law. Law-abiding citizens will not embark in a business that is forbidden by the laws of the State in which they live. Timid men are afraid to do so. This kind of operation is left, therefore, to those who have no respect for law, no interest

in the public welfare, and no fear of public opinion. When such men deliberately determine to put money in their pockets by engaging in a business which the State has declared to be injurious to the public morals, the public health, or the public peace, and has, therefore, forbidden altogether or placed under strict police regulations, they are morally certain to seek immunity for themselves and their unlawful business by immediate flight to the sanctuary of the National Constitution, and there laying hold on the horns of the altar of interstate commerce. The road to this refuge of lawbreakers is well beaten. There are signboards at every crossing on the route; and the intermediate stations for possible rest wear conspicuous signs of invitation. The travelers over it are generally foreigners to the State whose laws they trample upon, and include a motley assortment of traders. Beginning with the peripatetic swindlers whose worthless wares are transported in tin trunks which they carry in their hands, and who hunt their victims in the secluded villages and along the country roads with an instinct that rarely fails; and running up or down the scale of lawbreakers, to t men whose commercial operations extend to the sale of oleomargarine by the pound, and of intoxicating drinks by the pint, there is no man in the procession who is not a conscious and deliberate lawbreaker, and who does not set his possible profits from a forbidden business above his duty to society or the State that protects him. These men seek to pervert a rule of law that has a wide and beneficial field of operation. They claim to be engaged in interstate commerce, and to be entitled to the protection of the General Government as against the police laws of the individual States, for that reason. In support of their claim, they will assert that their 'goods,' whether consisting of oleomargarine, beer, whiskey, paste diamonds, pinchbeck watches or the like, were made on the other side of the State line and imported by or for them; or it may be they will claim to be the agents or factors of the makers; or to have received and be engaged in selling 'original packages,' consisting of a pound of oleomargarine, or a pocket flask of whiskey, put up expressly for their trade at the still or factory 'just over the line.' The mischief done and attempted in this manner, under the guise of

interstate commerce, is so great, so open and so difficult to suppress or punish, that in many States, besides this, it has become a matter of general and sincere regret that the interstate commerce clause was ever held applicable to trade in any article recognized throughout the civilized world as a proper subject for police regulation and control. We are embarrassed by the difficulties in the way of the enforcement of our police legislation, made in good faith, for the protection of our citizens. The question involved in this case is, therefore, one of great practical importance. It is nothing less than whether the police power of the States survives at all, or has been absorbed and extinguished by the interstate commerce clause in the National Constitution."

V.

The provision of the Dispensary law requiring all intoxicating liquors used in this State to undergo inspection to determine their purity, is valid as to all liquors, whether domestic or imported, and by whomsoever purchased or used.

As an inspection law, this Act is subject to the following principles:

I. That the States, in the exercise of the police power, may pass inspection laws which are not, in their express words or operation, a burden upon interstate commerce, by discriminating against the products or citizens of other States, and which operate equally upon the products and citizens of the States themselves and citizens and products of other States.

Gibbons v. *Ogden*, 9 Wheaton, 203.
Brown v. *Maryland*, 12 Wheaton, 419.
Robbins v. *Shelby Tax District*, 120 U. S., 403.
Smith v. *Alabama*, 124 U. S., 465.
Dent v. *West Virginia*, 129 U. S., 114.
Crutcher v. *Kentucky*, 141 U. S., 59.
Voight v. *Wright*, 141 U. S., 65.
Plumley v. *Mass.*, 155 U. S., 472.

II. That the Legislature is the judge of what is against the public health, morals, and safety of the State; and when, in the exercise of the police power, it enacts a law declaring the use of any article to be against them, it will not conflict with the Ninth

Article of the Constitution of the United States, unless it discriminates against the citizens and products of other States.

Railroad v. *Husen*, 95 U. S., 465.

Crowley v. *Christiensen*, 137 U. S., 91.

Plumley v. *Mass.*, 155 U. S., 472.

III. That the State, in the exercise of the police power, can enact laws protecting the people from the consequences of ignorance, incapacity, fraud, disease, poverty, and crime.

Sherlock v. *Alling*, 93 U. S., 103.

Dent v. *West Va.*, 129 U. S., 114.

Minn. v. *Barber*, 136 U. S., 313.

Brimmer v. *Rebman*, 138 U. S., 78.

Plumley v. *Mass.*, 155 U. S., 472.

We submit that the system of inspection provided is in accord with all these principles.

The main features of the Act are as follows:

I. The Act applies to all citizens of this State and of other States alike. There is no discrimination against the products of other States in favor of the products of South Carolina. On the contrary, if there is any discrimination, it is against the products of this State in favor of the products of other States—in that citizens of this State can purchase the liquor products of South Carolina only through the County Dispensaries, whereas such citizens may purchase the liquor products of other States and foreign countries, either through the Dispensary or by direct importation under the system of inspection provided. Thus the liquor products of other States are given two channels of trade through which to reach the consumer in South Carolina, whereas the products of this State are limited to one.

II. The same test, to wit: freedom from poisonous, hurtful and deleterious matters, is applicable to liquors sold through officers, and all citizens are subjected to identically the same inspection law.

III. A competent chemist, paid by the State, is required to immediately test all samples of liquors submitted to him by persons desiring to import such liquors for their personal use. Heavy penalties are provided for any neglect of duty on the part

of the chemist, thus assuring the importer promptness and efficiency in the test required.

IV. No fee or tax is charged or imposed upon the citizen for testing the sample or for the transportation charges thereon. Thus furnishing the importer a safeguard against injurious articles without expense.

V. It is not necessary that the liquor be met at the border of the State by the chemist, or for it to be sent to him, but the Act requires only a sample thereof to be sent and the chemist's certificate to be forwarded to the party from whom the same is to be purchased.

VI. This inspection law is complete, simple and easily understood; and causes the citizen no inconvenience, save possibly a little delay, which is reduced to the minimum by the provisions of the Act.

Under the Act, manufacturers and dealers in other States are permitted to solicit orders for liquors in South Carolina. The Act based upon these principles makes *quality* alone the test for admission to the market in this State as a legitimate article of commerce. This is in accord with the decisions of the Court.

In the case of *Bowman* v. *Railroad Company*, 125 U. S., 488, the Court said: "The right of the States to pass inspection laws is expressly recognized in art. I., section 10, of the Constitution, in the clause declaring that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

The nature and character of the inspection laws contemplated by the Federal Constitution are fully exhibited in case of *Turner* v. *Maryland*, 107 U. S., 38. The Court held: "The object of inspection laws, said Chief Justice Marshall, in *Gibbons* v. *Ogden*, is to improve the quality of articles produced by the labor of a country, to fit them for exportation; or it may be for domestic use. They are confined to such particulars, as in the estimation of the Legislature and according to the conditions of trade, are deemed necessary to fit the imported articles for the market, by giving to the purchaser the public assurance that the article is in that condition, and of that quality, which makes it

merchantable and fit for use or consumption. They are not founded on the idea that the things in respect to which importation is required, are dangerous or obnoxious in themselves."

The Justice delivering the opinion in that case further says: "Recognized elements of inspection laws have always been quality of the article, form, capacity, dimensions, and weight of package, mode of putting up and marking and branding of various kinds, all these matters being supervised by a public officer having authority to pass or not to pass the articles as lawful merchandise, as it did or did not answer the prescribed requirements. It has never been regarded as necessary, and it is manifestly not necessary, that all of these elements should coexist to make a valid inspection law. *Quality alone* may be the subject of inspection, without other requirements, or the inspection may be made to extend to all of the above matters."

In the case of *Donald* v. *Scott*, the case of *Minnesota* v. *Barber* is cited as somewhat similar to the inspection feature of the Dispensary Law of 1895. In this case the law related to an article of food, and not to liquors. But there is one essential difference between the inspection law of South Carolina and that of Minnesota, which was condemned by the Court. In that case, all cattle to be slaughtered were required to be imported in the State, and slaughtered in the State, and no meat from any other State could be sold, unless it had been slaughtered in the State. The Court held the Act unconstitutional, on the ground that its effect was to burden commerce with other States, because it prohibited the importation of all cattle into the State for sale, whether free from disease or not. In *Plumley* v. *Massachusetts*, U. S., 469, the Court, in speaking of cases of *Railroad Company* v. *Husen*, 95 U. S.; *Minnesota* v. *Barber*, 136 U. S.; *Brimmer* v. *Rebman*, 138 U. S.; and *Walling* v. *Michigan*, 116 U. S., said: "Each of these cases involved the question whether one State could burden interstate commerce by means of discriminations, enforced for the benefits of its own products and industries at the expense of the products and industries of other States." In commenting on *Minnesota* v. *Barber*, the Court said: "The Act of Minnesota directly tends to restrict the slaughtering of ani-

mals whose meat was to be sold in that State to those engaged in such business in that State."

In speaking of *Walling* v. *Michigan*, the Court said, that the invalidity of the Act of Michigan was on account of requiring persons living outside of the State, but engaged in the State in selling liquors to be shipped there from other places, to pay a tax, while no similar tax was imposed upon persons selling or soliciting the sale of liquors manufactured in that State.

The inspection system provided in the Act of 1897 differs materially in principle, purpose, and effect from the statutes considered in those cases. It does not exclude any article from the market because of its ultra State origin, but, on the contrary, throws open the markets of this State to foreign products to an extent not allowed even to domestic products. It puts all liquors under a test as to *quality* alone, without refereuce to their place of origin.

It can not be contended that the inspection system is invalid on any grounds of inconvenience.

In the case of *New York, New Haven and Hartford Railroad Co.* v. *New York*, 165 U. S., 628, it was held: "Cars employed in interstate commerce are not exempt, in the absence of national legislation covering the subject, from the operation of a State law forbidding, under penalties, the heating of passenger coaches in that State by stoves or furnaces inside the cars or suspended therefrom." In this case, the question was raised that the Act was in conflict with the interstate commerce clause of the United States Constitution, and, therefore, void; but the Court sustained its constitutionality. It was insisted in the argument that it was impossible to carry out this law because of the necessity of changing the cars heated as required by the Act on arrival at the borders of New York. The Court said: "These possible inconveniences can not affect the question of power in each State to make such reasonable regulations for the safety of passengers on interstate trains as, in its judgment, all things considered, is appropriate and effective. Inconveniences of this character can not be avoided so long as each State has plenary authority within its territorial limits to provide for the safety of the public according to its views of necessity and public policy, and so long

as Congress deems it wise not to establish regulations on the subject that would displace any inconsistent regulations of the State covering the same ground."

We would further submit, that the inspection system provided in the Act of 1897 meets every objection to the former Act presented by the Circuit Court in the case of *Ex parte Schneider et al., in re Donald v. Scott*, 74th Fed. Rep., 859; and in passing the inspection law, the General Assembly endeavored not only to conform strictly to the decisions of the Supreme Court of the United States, but to every utterance of the Circuit Court as well.

In the case just referred to, his Honor, the Circuit Judge, discussing the inspection system of the former Act, said: "The Attorney General says that this is an inspection law. Upon examining the Act, no provision is found for an inspection of spirituous liquors by the chemist of the South Carolina College, except when instructed to do so by the State Board of Control, and then only of such liquors as they shall purchase for use in the State; none making it his duty to inspect for any one else; none fixing his fees. He is not a State officer, but a professor in the College, having duties connected with his office which may or may not engross his time. The Act declares alcoholic liquors which do not bear a certificate of test by the chemist of the South Carolina College poisonous and injurious to the welfare, good health, and safety of the State, solely because of the absence of the certificate. No other reason whatever is given. At the same time, it omits to make it the duty of this chemist to inspect and test alcoholic liquors except when they are purchased for or by the State Board of Control. He may refuse to make any test of any other liquors. He can lawfully do so, and he can not be compelled to act otherwise. He may consent to make the test, but he can impose terms which would be prohibitory. The natural and reasonable effect of the Act is to exclude from the State entirely all other liquors whatever. Its direct result is to put in the hands of the State Board of Control the right to dictate who may or who may not import into the State these goods, and to shut out every one who does not meet their approval. The necessary consequence of its enactment is to burden and in a great measure impair commerce in this arti-

cle between citizens of this State and other States. Indeed, if by implication it be held that the State chemist could test other liquors than those bought by the State Board of Control, the fact that such liquors must be brought to him within the State, and must be transported through the State, before the test can be made, liable at once to seizure and confiscation, because not yet tested, effectually prevents any such test and inspection by him."

The mere reading of the Act of 1897 is sufficient to show that it meets every objection expressed or intimated by the Circuit Court in this case.

We do not contend for a moment that this inspection law does not affect commerce to any extent. It is difficult to conceive of any law enacted in the exercise of the police power that does not to some extent, at least, affect interstate commerce, and in every instance the question is, does it affect commerce to the extent of its regulation? This Act is not directed against commerce, but relates to the rights, duties, and liabilities of citizens, and only incidentally and remotely affects the operations of commerce. Such laws have uniformly been held valid. This principle has been very recently fully considered by this Court in the case of *Hennington* v. *Georgia*, 163 U. S., 299, in which a statute of Georgia, prohibiting all freight trains, both domestic and interstate, from running on Sunday, was declared constitutional.

Mr. Justice Harlan, delivering the opinion of the Court, said, after reviewing many authorities: "These authorities make it clear that the legislative enactments of the States passed under their admitted police powers, and having a real relation to the domestic peace, order, and health and safety of their people, but which, by their necessary operation, affect, to some extent, or for a limited time, the conduct of commerce among the States, are yet not invalid by force alone of the grant of power to Congress to regulate such commerce; and if not obnoxious to some other provisions of the Constitution, are to be respected in the Courts of the Union, until they are superseded and displaced by some Act of Congress in execution of the power granted to it by the Constitution."

Upon these principles we seek to uphold the inspection feature of the Act of 1897 as valid and constitutional.

By reference to the Act of 1897, hereto appended, it will be observed that Section 41 of the former Act has been repealed. This Section purported to prohibit the soliciting of orders for liquor within the State. The Circuit Court, in *Ex parte Loeb*, held it invalid, and the General Assembly repealed it, at the same time that it provided for a system of inspection of liquors imported for personal use.

Under the decision of this Court, in *Scott* v. *Donald*, giving citizens of the State the right to make such importations, the General Assembly, in enacting the system of inspection provided, endeavored to subject liquors imported for personal use to exactly the same test that is applied to liquors purchased and sold through the Dispensary.

Referring to this system of inspection, his Honor, the Circuit Judge, in his opinion in this case, says: "A resident of the State may, under the present Dispensary Law, send his orders to a producer outside of the State for liquors for his own personal use and consumption, and a limited importation, within a restricted period and under an absolute condition, is allowed such resident. The producer is limited to this. He can not import his goods into this State in any other way. The condition of such importation is this: Any resident who desires to import for his own personal use and consumption shall first certify to the chemist of the South Carolina College the quantity and kind of liquor he wishes to import, with the name and address of the person from whom he wishes to purchase, stating, also, that such proposed purchaser will forward to Columbia, S. C., to said chemist, a sample of the liquor. On receipt of the sample, the chemist immediately proceeds to test it, and, if found to be pure and free from any poisonous, hurtful or deleterious matter, he issues a certificate to that effect, giving names of proposed consignor and consignee, and the quantity and kind of liquor to be imported, sends it free of expense and postpaid to the consignor, and the liquor can be shipped within sixty days after the date of the certificate, which can be used only once."

Then, seemingly following further the view that nothing short

of prohibition is valid, his Honor says: "It will be noted that the use of alcoholic liquors as a beverage is not prohibited, nor is their importation for personal use forbidden, provided such beverages are free from 'poisonous, hurtful, and deleterious matter,' other than the alcohol in them. The Act provides the essential and conclusive test on this point—the certificate of the chemist of the South Carolina College. The Act also declares all alcoholic liquors not tested by the chemist of the South Carolina College and so found to be 'free from all poisonous, hurtful, and deleterious matters,' necessarily matters other than alcoholic ingredients, to be of a detrimental character, and their use and consumption to be against the morals, good health, and safety of the State—that is to say, without any regard whatever to their real character, the presence or absence of the certificate is the sole test. This can be sustained only on the fact that it is a valid inspection law."

What could determine the legality or illegality of the liquor, if not the "presence or absence of the certificate?" That, however, is not the sole test, as stated by the Circuit Court. It is no test at all, but is the evidence of the test. The test is freedom from poisonous, hurtful, and deleterious matters, and the certificate is the guide by which officers are to determine the legality of the liquor. By its presence or absence the officer may know whether or not the liquors reach the standard required by the law of the State.

His Honor further says: "In *Scott* v. *Donald*, the Supreme Court, discussing a similar feature in the Act of 1895, says: 'To empower the State Chemist to pass upon what the law calls the alcoholic purity of such importations by chemical analysis, can scarcely come within any definition of a reasonable inspection law.' To the proposition announced by this Court, we accede, but the provision of the Act now under consideration is not similar to the Act of 1895. In the former Act, the standard was alcoholic purity; whereas, in the present Act, as stated by the Circuit Court, the requirement is that liquors used in South Carolina shall be 'free from poisonous, hurtful, and deleterious matter, other than the alcohol in them.'"

Further considering this method of inspection, his Honor says:

"There can be no doubt that a State can enact laws protecting its citizens in the purchase of articles, imported or domestic, from purchasing something they did not intend to buy, or adulterated, so as to threaten disease or death. *Plumley* v. *Massachusetts*, 155 U. S., 461, 15 Sup. Ct., 154. But it must be a law which protects, or at least tends to protect, the citizen. It must give him security. If it does not do so absolutely, still it must contribute to secure him. The mode of inspection in this Act is by sample. Let it be supposed that the sample has been furnished, has been inspected, has been approved, and that the certificate has been sent to the consignor; what sort of assurance does it give the citizen that this liquor he thereupon receives accords with, come up to, or in any wise resembles the sample? What protection does it give the citizen from fraud from a failure to send liquor according to sample? None whatever. It only subjects him to the seizure and forfeiture of his goods, if, perchance, they should be inspected. The fraudulent seller is out of reach. Upon what, then, must the citizen rely? He can only rely upon the business character, standing and integrity of the person from whom he buys, without any regard whatever to the inspection. This so-called inspection, furnishing no security to the citizen, cannot thereby be justified. It can operate only as a restriction upon, and hindrance and burden to, his acknowledged right to import for his personal use. It is thus an interference with interstate commerce, and in itself void."

In this connection, his Honor seems to have considered only the portion of the Dispensary Act relating to importation for personal use, without any relation to the remainder of the Act. We must construe the law as a whole, and when it is suggested that a method of inspection by sample affords no guarantee to the importer, that the "liquor he thereupon receives accords with, comes up to, or in any wise resembles the sample," we must also remember that the same Act provides a method by which he can purchase his liquor through the Dispensary after it has undergone the required test. The law offers to the citizen pure liquors at the County Dispensary, but says to him at the same time that he may purchase beyond the State, if he prefers,

and requires only that the liquors so purchased shall be subject to the same test as those offered him at home.

His Honor says that the citizen can "only rely upon the business character, standing and integrity of the person from whom he buys, without any regard whatever to the inspection." Again, we say, that the citizen may buy from the State, but if he chooses to buy from a non-resident dealer, it is presumed that he relies to some extent upon his character and integrity.

The principle upon which the inspection feature is based is the same principle of equality of treatment of foreign and domestic products that characterizes the entire Act; the only discrimination, if there is any, being that the foreign product has two channels through which to reach the importer in South Carolina, to wit: through the Dispensary or by direct importation for personal use; whereas, the domestic product is limited to one. If this inspection system bears equally upon residents and non-residents, and does not discriminate against the products of other States, the requirements of the Federal Constitution and the Acts of Congress are complied with. When this has been done, what method the State of South Carolina may adopt for controlling the liquor traffic is a matter whose consideration is wholly without the jurisdiction of the Federal Court.

His Honor, the Circuit Judge, does not maintain that the inspection system discriminates against the citizens or products of other States. He again relies upon the proposition that it is an "interference with interstate commerce, and in itself void." Again, we reply, that however much it may affect commerce, it bears alike upon the citizen and the stranger, upon the domestic and foreign product, and therein fulfills the requirement of "uniformity of treatment" contemplated by the Wilson Act, which, alone, is the test of the validity of the Statute.

Until it is shown that the inspection feature of the Dispensary Law is discriminating either directly or by natural operation, we respectfully submit that this Court must sustain it.

Finally, we beg to say, whatever may be the constitutional right of a citizen, as decided in *Scott* v. *Donald*, to import liquors for his own personal use, the Courts have uniformly held that there is no inherent right in a citizen to sell intoxicating liquors; that it is not a privilege of a citizen of a State or of a citizen of the United States. It was so held in *Crowley* v. *Christiansen*, 137 U. S., 91, following *Mugler* v. *Kansas*, 123 U. S., 659. But why quote other decisions, when the Court from which we are now appealing has furnished us authority? In the case of *Cantini* v. *Tillman*, 54 Fed. Rep., 659, his Honor said: "We have seen that the right to sell intoxicating liquors is not one of the privileges of American citizenship; that it is not within the protection of the fourteenth amendment; that it is within the police power." A State statute that denies such a right to a citizen of South Carolina by operation of the Wilson Act extends as well to the stranger, when he comes within her borders. This principle was recognized by his Honor, Judge Simonton, in *Ex parte Schneider et al., in re Donald* v. *Scott*, 74 Fed. Rep., 864, when he said: "No citizen of any other State can claim greater privileges than her own citizens." We respectfully submit that to sustain the injunction in this case, is to subvert this principle of equal privileges, to ignore the Act of Congress of August, 1890, and to destroy the "uniformity of treatment" contemplated by that Act.

WILLIAM A. BARBER,
ATTORNEY GENERAL OF SOUTH CAROLINA,
For Appellants.

NOTE: This Brief is intended to apply also to Case No. 515.

APPENDIX.

ACT OF 1896---NO. 61.

AN ACT to Provide for the Election of the State Board of Control and to Further Regulate the Sale, Use, Consumption, Transportation and Disposition of Intoxicating and Alcoholic Liquors or Liquids in the State and Prescribe Further Penalties for Violation of the Dispensary Laws and to Police the Same.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance, for unlawful use, delivery, storing, and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquor, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association or corporation upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer,) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State Penitentiary or pay a fine of not less than one hundred dollars nor more than five hundred dollars, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors, except when bought of a State officer authorized to sell the same, or in possession of one and having been duly tested by the Chemist of the South Carolina College and found to be chemically pure, are declared to be contraband and against the morals, good health and safety of the State, and all alcoholic liquors in this State and not having been tested by the Chemist of the South Carolina College and found to be chemically pure are hereby declared to be of a poisonous and detrimental character, and their use and consumption as a beverage are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and turned over to the State Commissioner.

Section 2. A Board consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act. The terms of office of the Board so elected shall be for one, two, three, four and five years respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of bookkeeping and accounting as they may deem advisable, and shall elect a clerk or bookkeeper, who shall hold his office during the pleasure of the Board and shall receive as compensation for his services a salary of fifteen hundred dollars per annum. The State Board of Control, under such rules and regulations as may be adopted by said Board, shall purchase all liquors for lawful use in this State, and shall have the same tested and declared to be pure as hereinbefore and hereinafter provided.

Section 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful use in this State, to such persons as may be designated as Dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside, and have his place of business, in the city of Columbia, in this State, and hold his office two years from his appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of twenty-five hundred dollars, payable from the Dispensary fund upon the warrant of the State Board of Control. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of twelve hundred dollars, and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not furnish to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the Chemist of the South Carolina College and declared to be pure: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the Chemist of the South Carolina

College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such Chemist or such assistants. Each County Dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County Dispensers in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall before entering upon the duties of his office execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers, in the penal sum of ten thousand dollars, for the faithful performance of the duties of his office. In all purchases or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to State Commissioner from the place of purchase, or by State Commissioner to the County Dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the Chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates any package containing liquors which shall be shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of five hundred dollars for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificates without the authority of the State Board of Control, or any counterfeit certificate, for the purpose of securing the

transportation of any intoxicating liquors within this State, in violation of law, shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars and imprisonment in the Penitentiary for not less than one year for each offense.

Section 4. The State Commissioner shall before shipping any liquors to Dispensers, except lager beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely seal the same, and it shall be unlawful for the Dispenser to break any of such packages or open the same for any reason whatsoever. He shall sell by the package only, and no person shall open the same on the premises: Provided, This Section shall not apply to malt liquors shipped in cases or kegs or bottles thereof shipped in barrels; and such malt liquors may be sold by the County Dispenser in such quantities, of not less than one pint, as he may see proper: Provided, The same shall not be drunk on the premises. Dispensers shall open their places of business and sell only in the day time, under such rules as may be made by the State Board of Control, or by the County Board of Control with approval of the State Board of Control.

Section 5. It shall be the duty of the State Board of Control to appoint a County Board of Control composed of three persons believed by the said Board not to be addicted to the use of intoxicating liquors. The persons so appointed shall hold their office for a term of two years, and until their successors are appointed, and shall be subject to removal for cause by the State Board of Control. Said County Board of Control shall make such rules as will be conducive to the best management of the sale of intoxicating liquors in their respective Counties: Provided, All such rules shall be submitted to the State Board and approved by them before adoption. The members of the County Board of Control shall qualify and be commissioned as are other County officers without fees therefor.

Section 6. Applications for positions of County Dispenser shall be by petition, signed and sworn to by the applicant, and filed with the County Board of Control at least twenty days before the meeting at which the application is to be considered, which petition shall state the applicant's name, place of residence, in what business engaged, and in what business he has been engaged two years previous to filing petition; that he is a qualified elector of this State and a resident of the County; that he has never been adjudged guilty of violating the law relating to intoxicating liquors, and is not a keeper of a restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage. The appointment shall be made only on condition that the applicant shall execute

to the County Treasurer a bond in the penal sum of three thousand dollars, with good and sufficient sureties, conditioned that he will well and truly obey the laws of the State of South Carolina, now or hereafter in force, in relation to the sale of intoxicating liquors; that he will pay all fines, penalties, damages and costs that may be assessed or recorded against him for violations of such laws during the term for which said appointment is made, and will not sell intoxicating liquors at a price other than that fixed by State Board of Control. Said bond shall be for the use of the State and County or any person or persons who may be damaged or injured by reason of any violation on the part of the obligor of the law relating to intoxicating liquors purchased or sold during the term for which said appointment is made. The said bond shall be deposited with the County Treasurer, and suit thereon shall be brought at any time by the Solicitor or any person for whose benefit the same is given; and in case the conditions thereof, or any of them, shall be violated, the principal and sureties thereon shall also be jointly and severally liable for all civil damages, costs and judgments that may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employer or other person under the provision of the law. All other moneys collected for breaches of such bond shall be distributed as other funds arising from the Dispensary. Said bond shall be approved as other official bonds for the County.

Section 7. There may be one or more County Dispensers appointed for each County, the place of business of each of whom shall be designated by the County Board, but the State Board of Control must give consent before more than one Dispenser can be appointed in any County; and when the County Board designates a locality for a Dispensary, twenty days' public notice of which shall be given, it shall be competent for a majority of the voters of the township in which such Dispensary is to be located to prevent its location in such township by signing a petition or petitions, addressed to the County Board, requesting that no Dispensary be established in that township. The County Board may in its discretion locate a Dispensary elsewhere than in an incorporated town in the Counties of Beaufort and Horry, and no others, except such as are authorized by special Act of the General Assembly: Provided, however, That any County, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1, 1893, may secure the establishment of a Dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such County, town or city wishing a Dispensary therein being filed with the County Supervisor or Town or City Council, respectively, they

shall order an election submitting the question of Dispensary or no Dispensary to the qualified voters of such County, town or city, which election shall be conducted as other special elections; and if a majority of the ballots cast be found and declared to be for a Dispensary, then a Dispensary may be established in said County, town or city: Provided, That Dispensaries may be established in the Counties of Williamsburg, Pickens and Marion and at Seneca and other towns now incorporated in Oconee County without such election or compliance with the other requirements of this Act: Provided, That nothing in this Act contained shall be so construed as to prohibit persons resident in Counties which shall elect to have no Dispensary from procuring liquors from Dispensaries in other Counties, or County Dispensers from shipping same to their places of residence under proper labels or certificates: Provided, further, That nothing in this Act shall be construed to repeal an Act entitled "An Act to allow the opening of Dispensaries in Pickens and Oconee Counties," approved December 18th, 1894.

Section 8. If the application for the position of Dispenser be granted, the appointment shall not be made until the applicant shall make and subscribe on oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor following: "I, ————————, do solemnly swear (or affirm) that I will well and truly perform all and singular the condition of the within bond, and keep and perform the trusts confided in me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than is provided by law, and, especially, I will not sell or furnish intoxicating liquors to any minor, intoxicated person or persons who are in the habit of becoming intoxicated, and I will make true, full and accurate returns to the County Board of Control on the first Monday of each month of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns shall show every sale and delivery of such liquors made by me or for me during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and the oath required by the Constitution, and filing bond as hereinbefore provided, the County Board of Control shall authorize him to keep and sell intoxicating liquors as in this Act provided, and every appointment so made shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no

case shall exceed twelve months. Appointments made under this Act shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing by order of the County Board of Control; and upon the removal of any County Dispenser, or upon demand of the County Board of Control, he shall immediately turn over to the County Board of Control all liquors and other property in his possession belonging to the State or County. Said County Board of Control shall be charged with the duty of prosecuting the County Dispenser or any of his employees who may violate any of the provisions of this Act. On the death, resignation or removal of a County Dispenser, or expiration of his term of office, the County Board shall appoint his successor.

Section 9. The County Board of Control shall use as their office the office of the County Supervisor of their County and shall elect one of their number as Chairman and a clerk of the said County Board of Control. The County Board shall preserve as a part of the records and files of their office all petitions, bonds and other papers pertaining to the appointment of Dispensers and keep suitable books in which bonds shall be recorded. The books shall be furnished by the County like other public records. The County Board of Control shall designate or provide a suitable place in which to sell the liquors. The members of the County Board of Control shall meet once a month or oftener, on the call of the Chairman, and each member of the Board shall receive a per diem of two dollars and five cents mileage each way, but they shall not receive compensation for more than thirty days in any one year, except in the County of Charleston, where they shall not receive compensation for more than sixty days in any one year, and in Barnwell County not more than fifty days in any one year. They shall, upon the approval of the State Board of Control, employ such assistants for the County Dispenser as may be necessary. The Dispenser and his assistants shall receive such compensation as the State Board of Control may determine. All profits, after paying all expenses of the County Dispensary, shall be paid, one-half to the County Treasurer and one-half to municipal corporation in which it may be located, such settlements to be made quarterly: Provided, That if the authorities of any town or city, in the judgment of the State Board of Control, do not enforce this law, the State Board may withhold the part going to the said town or city and use it to pay State Constables or else turn it into the County treasury. All moneys received by the County Dispenser belonging to the State shall be forwarded on Monday of each week to the State Treasurer,

and at the same time the County Dispenser shall forward to the State Board of Control a duplicate statement of the remittance so made to the State Treasurer. On the same day of each week the County Dispenser shall deposit with the County Treasurer the portion of all the moneys received by him belonging to the County and to the municipal authorities in which the Dispensary is located. The County Treasurer shall give his receipt therefor, and hold the same until the quarterly settlement hereinbefore provided for is had. The quarterly settlements herein provided for shall be made on the fourth Monday in the months of March, June, September and December in each year. Such settlements shall be made in the presence of the County Auditor, who shall make a memorandum of the items thereof and forward the same to the State Board of Control. The Mayor or Intendant of the city or town in which the Dispensary is located may also attend such settlement: Provided, That in Counties where Dispensaries are established in other than incorporated cities or towns the County shall get all profits that would otherwise go to such cities and towns: Provided, That in the County of Barnwell the clerk of the Board of County Commissioners shall be the clerk of the Board of Control.

Section 10. Before selling or delivering any intoxicating liquors to any person a request must be presented to the County Dispenser, printed or written in ink, dated of the true date, stating that he or she is of age and the residence of the signer, for whom or whose use it is required, the quantity and kind required and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the County Dispenser or his clerk who receives and files the requests. But the requests shall be refused if the County Dispenser filling it personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said County Dispenser, before filling said order or delivering said liquor he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a minor and is not in the habit of using intoxicating liquors to excess.

Section 11. Requests for purchase of liquor shall be made upon blanks furnished by the County Auditor, in packages of one hundred each, to the County Dispenser, from time to time as the same shall be needed, and shall be numbered consecutively by the Auditor. The blanks aforesaid shall be furnished to the County Auditor by the State Board of Control, in uniform books like bank checks, and the date of delivery shall be endorsed by the County Auditor on

each book and receipt taken therefor and preserved in his office. The Dispenser shall preserve the application in the original form consecutively by the Auditor. When return thereof is made the County Auditor shall endorse thereon the date of return, and file and preserve the same, to be used in the quarterly settlements between such Dispenser and the County Treasurer. All unused or mutilated blanks shall be returned or accounted for before other blanks are issued to such County Dispenser.

Section 12. On or before the tenth day of each month each Dispenser shall make full returns to the County Auditor of all requests filled by him and his clerks during preceding month, upon blanks to be furnished by the State Board of Control for that purpose, and accompany the same with an oath, duly taken and subscribed before the County Auditor or a Notary Public, which shall be in the following form, to wit: I, ————, being duly sworn, state on oath that the request for liquors herewith returned are all that were received and filled at my place of business under my permit during the month of ————, 189—; that I have carefully preserved the same, and that they were filled up, signed and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kind of liquors required, and that no liquors have been sold or dispensed under my permit during said month except as shown by the request herewith returned; and that I have faithfully observed and complied with the provisions of my bond and oath taken by me, thereon endorsed, and with all the laws relating to my duties in the premises.

Section 13. Upon failure of any Dispenser to make returns to the Auditor as herein required, it shall be the duty of said Auditor to report such failure to the State Board of Control, and the said State Board of Control shall immediately order the County Board to summon said delinquent Dispenser to appear before them and show cause why his appointment should not be revoked; and if cause shall not be shown to the satisfaction of the County Board of Control, they shall immediately annul said appointment and give public notice thereof; and the Circuit Solicitor shall proceed to enforce the penalties prescribed in this Act for such violation against said County Dispenser at the next succeeding term of Court in the County in which such appointment is held; and any Dispenser who shall sell or dispose of any intoxicating liquors after his appointment shall have been revoked shall, upon conviction thereof, be fined not less than five hundred (500) dollars and be imprisoned for six months. If any Dispenser or his clerk shall procure any intoxicating liquors from any other person except the State Commissioner, or if he or they

or any person or persons in his or their employ, or by his or their direction, shall sell or offer for sale any liquors other than such as have been furnished by the State Commissioner, or shall adulterate, or cause to be adulterated, any intoxicating spirituous or malt liquors which he or they may keep for sale under this Act, by mixing with some coloring matter or any drug or ingredient whatever, or shall mix the same with other liquors of different kind or quality, or with water, or shall sell or expose for sale such liquors so adulterated, knowing it to be such, or shall change the label upon any box, bottle or package, he or they shall be guilty of a misdemeanor and be fined in a sum of not less than two hundred dollars or imprisoned for not less than six months. If any County Dispenser shall misappropriate, misuse or otherwise wrongfully dispose of any moneys or other property belonging to the State, County or municipality, he shall upon conviction be punished as in case of breach of trust with fraudulent intent.

Section 14. That any County Dispenser who, in violation of his oath of office, sells or furnishes intoxicating liquors to any minor, intoxicated person, or person who is in the habit of becoming intoxicated, or fails to make full and accurate returns as required by law, showing the true signature to every request for liquor by him received and granted, or sells liquors to any person without first requiring the written requests therefor to be filled out and signed as provided by law or the regulations of the State Board of Control, that on such information given by any person, with sufficient evidence, it shall be the duty of the Solicitor to bring suit in the name of the County for two hundred dollars' damages on the bond of the said County Dispenser against the principal and sureties of said bond for each of such violations, for which said principal and sureties shall be liable, jointly and severally, together with all cost and judgments pertaining to the suit. And on judgments given against him the said County Dispenser shall be immediately deprived of his office as Dispenser, and his principal and sureties aforesaid shall remain further liable, jointly and severally, to the extent of their bond, to all civil damages, costs and judgments which may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employee, or other person, under the provisions of the law: Provided, That if the said County Dispenser can show to the satisfaction of a jury by way of defense that the said intoxicating liquor was obtained from him by the infant, intoxicated person, or person in the habit of becoming intoxicated, by fraudulent and deceitful representations, the person making such fraudulent and deceitful representation shall be guilty of a misdemeanor,

and be fined in a sum of not less than two hundred dollars or imprisonment for not less than six months.

Section 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter, or dispense, any liquors containing alcohol, for any purpose whatsoever, otherwise than is provided in this Act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State shall first obtain from the State Board of Control a permit or license so to do; and it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol, the applicant shall give the State full power upon any violation of this Act to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government the tax upon the same if unpaid, and to dispose thereof as provided herein for contraband goods. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Board of Control allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished as in Section three: And provided, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The Inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the Inspector or Constable to enter and examine his place of business and its appurtenances at such times as the Inspector or Constable may deem proper, shall forfeit his permit or license.

Section 16. Every Dispenser shall keep a strict account of all liquors received by him from the State Commissioner, in a book kept for that purpose, which shall be subject at all times to the inspection of the Circuit Solicitor, any peace officer or grand juror of the County, or of any other citizen, and such book shall show the amount and kind of liquors procured, the date of receipt and amount

sold, and the amount on hand of each kind for each month. Such book shall be produced by the party keeping the same, to be used as evidence on trial of any prosecution against him on notice duly served that the same will be required as evidence.

Section 17. The payment of the United States special tax as a liquor seller, or notice of any kind in any place of resort, or in any store or shop, indicating that alcoholic liquors are there sold, kept or given away, shall be held to be prima facie evidence that the person or persons paying said tax and the parties displaying such notices are acting in violation of this Act, and unless said person or parties are selling under appointment as prescribed by this Act, they shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months. Conviction in the United States Courts of illicit sales of liquors shall be taken as prima facie evidence of violation of the provisions of this Act, and any distiller or manufacturer of liquors containing alcohol so convicted in the United States Courts shall, by reason of such conviction, forfeit the permit or license granted him by the State Board of Control in addition to the other penalties herein provided.

Section 18. Licensed druggists conducting drug stores and manufacturers of proprietary medicines are hereby authorized to purchase of Dispensers of the Counties of their residence, intoxicating liquors (not including malt) for the purpose of compounding medicines, tinctures and extracts that cannot be used as a beverage. The Dispenser shall not charge licensed druggists more than ten per cent. net profits for liquors so sold. Such purchaser shall keep a record of the uses to which the same are devoted, giving the kind and quantity so used, and quarterly they shall make and file with the County Auditor and with the County Board of Control sworn reports, giving a full and true statement of the quantity and kinds of such liquors purchased and used, the uses to which the same have been devoted, and giving the name of the Dispenser from whom the same was purchased, and the dates and quantities so purchased, together with an invoice of each kind still in stock and kept for such compoundings. If said licensed druggist shall sell, barter, give away or exchange, or in any manner dispose of, said liquors for any purpose other than authorized by this Section, he shall upon conviction forfeit his license and be liable to all penalties, prosecutions and proceedings at law and in equity provided against persons selling without authority, and upon such conviction the Clerk of the Court shall, within ten days after such judgment or order, transmit to the Board of Pharmaceutical Examiners the certified record

thereof, upon receipt of which the said Board shall strike the name of the said druggist from the list of pharmacists and revoke his certificate: Provided, That nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form or device, which may be used as a beverage which is intoxicating in its character: And provided, further, That the State Commissioner shall be authorized to sell to manufacturing chemists and wholesale druggists alcohol by the barrel at not exceeding ten per cent. above the net cost.

Section 19. If any person shall make any false or fictitious signatures or sign any name other than his or her own to any paper required to be signed by this Act without being authorized to do so, or make any false statement in any paper, request or application signed to procure liquor under this Act, the person so offending shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars or be imprisoned not more than thirty days.

Section 20. If any Dispenser or his clerk shall make false oath touching any matter required to be sworn to under the provisions of this Act, the person so offending shall, upon conviction, be punished as provided by law for perjury. If any County Dispenser shall procure any intoxicating liquors from any other person than the State Commissioner, or make any false return to the County Auditor, or use any request for liquors for more than one sale, in any such case he shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine of five hundred dollars or six months' imprisonment.

Section 21. Every person who shall, directly or indirectly, keep or maintain by himself, or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining, any club room or other place in which any intoxicating liquors are received or kept for use, barter or sale as a beverage, of for distribution or division among the members of any club or association by any means whatever, and every person who shall receive, barter, sell, assist, or abet another in receiving, bartering or selling, any alcoholic liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months: Provided, That the State Board of Control shall have the power, upon a proper showing, and under such rules as they may adopt, to exempt hotels where tourists or health-seekers resort from being considered nuisances or as violating

this Act by reason of any manager of such hotels dispensing liquors bought from the Dispensary by the bottle, either night or day, but before any such exemption shall be granted the State Board of Control shall require the manager of such hotel to give a good and sufficient bond in the penal sum of three thousand dollars conditioned for the observance of all the rules, regulations and restrictions prescribed and imposed by the said Board and with all the requirements of this Act, and it shall be lawful for any Constable or officer thus employed under this Act to enter such hotels and search it for contraband liquors at any time, day or night, without a warrant.

Section 22. All places where alcoholic liquors are manufactured, sold, bartered or given away in violation of this Act, or where persons are permitted to resort for the purpose of drinking alcoholic liquors as a beverage, or where alcoholic liquors are kept for sale, barter or delivery in violation of this Act, are hereby declared to be common nuisances, and any person may go before any Magistrate in the County and swear out an arrest warrant on personal knowledge or on information and belief, charging said nuisance, giving the names of witnesses against the keeper or manager of such place and his aids and assistants, if any, and such Magistrate shall direct such arrest warrant either to the Sheriff of the County or to any special Constable, commanding said defendant to be arrested and brought before him to be dealt with according to law, and shall issue a search warrant in which the premises in question shall be particularly described, commanding such Sheriff or Constable to thoroughly search the premises in question and to seize all alcoholic liquors found thereon, and dispose of them as provided in Section 31, and to seize all vessels, bar fixtures, screens, bottles, glasses and appurtenances apparently used or suitable for use in retailing liquors, to make a complete inventory thereof, and deposit the same with the Sheriff. That under the arrest warrant the defendant shall be arrested and brought before such Magistrate, and the case shall be disposed of as in case of other crimes beyond his jurisdiction, except that when he commits or binds over the parties for trial to the next term of Court of General Sessions for the County he shall make out every paper in the case in duplicate and file one with the Clerk of the Court for the County, and immediately transmit the other to the Solicitor of the Circuit, whereupon said Solicitor shall at once apply to any Circuit Judge at chambers within that Circuit, or to the nearest Circuit Judge if there be none in that Circuit, for an order restraining the defendants, their servants or agents, from keeping, receiving, bartering, selling or giving away any alcoholic liquors until the further order of the Court. Such Circuit Judge is

hereby authorized, empowered and required to grant the said restraining order without requiring a bond or undertaking upon the hearing or receipt by him of said papers from the Court of the said Magistrate by the hands of the Solicitor; and any violation of said restraining order before the trial of the case shall be deemed a contempt of Court and punished as such by said Judge or Court, or any other Circuit Judge, as for the violation of an order of injunction. Upon conviction of said defendants of maintaining said nuisance at the trial, they or any of them shall be deemed guilty of a misdemeanor, punishable by imprisonment in the County jail for a term of not less than three months or a fine of not less than two hundred dollars, or by both, in the discretion of the Court, and the restraining order shall be made perpetual. The articles covered by the inventory, which were retained by the Sheriff, shall be forfeited to the State and sold, and the net proceeds sent to the State Treasurer, and the Sheriff shall forthwith proceed to dispose of the alcoholic liquors covered by said inventory as provided for in this Act as when other liquors are seized. Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officers in possession of the same by any writ of replevin or other process while the proceedings herein provided are pending. No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Act. Any person violating the terms of any restraining order granted in such proceedings shall be punished for contempt by a fine of not less than two hundred dollars nor more than one thousand dollars, and by imprisonment not less than ninety days nor more than one year.

In contempt proceedings arising out of the violation of any injunction granted under the provisions of this Act, the Court, or in vacation any Judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. The affidavits upon which the attachment for contempt issues shall make a prima facie case for the State. At the hearing upon the charge of contempt, evidence may be oral or in the form of affidavits, or both. The defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers. The Clerk of the Court shall, upon the application of either party, issue subpœnas for witnesses, and, except as above set forth, the practice in such contempt proceedings shall conform as nearly as may to the practice in the Court of Common Pleas. That when any Solicitor neglects or refuses to perform any duty, or to take any steps required of him by any of the provisions of the preceding Section, or by any of the provisions of this Act, the Attorney General, on his own motion, or by

request of the Governor, shall in person or by his Assistant, proceed to the locality and perform such neglected duty, and take such steps as are necessary in the place of such Solicitor, and at his discretion to cause a prosecution to be instituted, not only in the matter so neglected, but also a prosecution against the Solicitor for malfeasance or misfeasance in office, or for official misconduct, or for other charges justified by facts, and to pursue the prosecution to the extent of a conviction and dismissal from office of any such Solicitor.

And in such event the Attorney General shall be, and is hereby, authorized and empowered to appoint one or more additional assistants, who shall each have while actually employed the same compensation, to be paid from the litigation fund of the Attorney General.

Any duty herein imposed upon a Solicitor may be performed with equal force and effect by the Attorney General or other person authorized by him to perform such duty.

Section 23. The manager of every registered distilley of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

Section 24. In all places where liquors are unlawfully kept or stored, the same not being in an open house or exposed to view, and a search being necessary, upon affidavit to that effect, or on information and belief that contraband liquor is in such place, a search warrant may be issued by a Justice, Judge or Magistrate, or Mayor or Intendant of a city or town, to whom application is made, empowering a Constable, or any person who may be deputized, to enter the said place by day time, or in the night time, and to search and examine the said premises for the purpose of seizing the said contraband liquors therein concealed, kept or stored, which said liquor when so seized shall be disposed of as hereinafter provided.

Section 25. That any of the liquors set forth in Section one (1) of this Act, which are contraband, may be seized and taken without warrant by any Constable, Sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dis-

pose of the same as hereinafter provided: Provided, That liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon.

Section 26. That the possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note of indebtedness, contracted in their sale or transportation is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any Court in this State.

Section 27. That the proceedings against liquor so illegally kept, stored, sold, delivered, elsewhere than at his or her residence, transported or being transported, shall be considered a proceeding in rem, unless otherwise herein provided.

Section 28. That the carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks, packages or boxes containing the same, or the causing of such carriage, transportation, possession, removal, sale, delivery or acceptance, shall work the forfeiture of said liquors or liquids and casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for the term of not less than six months nor less than one year, and the wrongful name, address, mark, stamp or style on such liquor when seized shall be considered evidence prima facie of guilt. The books and way bills of the common carrier may be examined to trace said liquor to the shipper, who shall be liable, upon conviction, in like penalty.

Section 29. That all Constables, Deputy Constables, Sheriffs, Magistrates or municipal policemen shall have the right, power and authority, and it shall be their duty, whenever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty four hours without any warrant or process whatever. Any Constable, Deputy Constable, Sheriff or Magistrate who shall neglect or refuse to perform the duties required by this Act shall be subject to suspension by the Governor. Any Sheriff or Magistrate seizing any alcoholic liquors or liquids as required by this Section shall be paid one-half the value of said liquor or liquids so soon as the same shall have been received at the State Dispensary, approved and disposed of according to law.

Section 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall be deemed a misdemeanor, and the person or persons so offending shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisoned for a term of not less than three months nor more than twelve months.

Section 31. In all cases of seizure of any goods, wares, merchandise, or any other property, hereafter or heretofore, made as being subject to forfeiture under any provisions of this Act or any former Act, which in the opinion of the officer or person making the seizure are of the appraised value of fifty dollars or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina residing within the county wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar per day, not exceeding five days, to be paid by the State Board of Control. Second. If the said goods are believed by the officer making the seizure to be of less value than fifty dollars, no appraisement shall be made. The said officer or person shall proceed to publish a notice for three weeks, in writing, at three places in the county where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. That any person claiming the liquors or other property so seized as contraband within the time specified in the notice may file with the State Board of Control a claim, stating his interest in the articles seized, and may execute a bond to the State Board of Control in the penal sum of five hundred dollars, with sureties to be approved by the State Board of Control, conditioned that in the case of condemnation of the articles so seized the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Board of Control he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in

which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State Chemist, and if pure shall furnish the same through the State Dispensary. If not pure the same shall be destroyed by the Chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed: Provided, That in seizures in quantities less in value than fifty dollars of such illicit liquor or liquors, the same may be advertised with other quantities at Columbia by the State Board of Control and disposed of as hereinbefore provided: Provided, further, That the claimants of such liquors may give bond in one hundred dollars as when the value is fifty dollars or over, and shall bear the burden of showing before a Magistrate that they have complied with the law and that the liquor is not liable to seizure.

Section 32. That all fermented, distilled or other liquors, or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage, or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State.

Section 33. That no person, except as provided in this Act, shall bring into this State, or transport from place to place within this State, by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquor or liquids containing alcohol, under a penalty of one hundred dollars or imprisonment for thirty days for each offense, upon conviction thereof, as for a misdemeanor. Any servant, agent or employee of any persons, corporations or associations doing business in this State as a common carrier, or any person whatever (except an officer seizing or examining the same), who shall remove any intoxicating liquors from any railroad car, vessel or other vehicle of transportation at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some incorporated city or town where there is a Dispensary, or who shall aid in or consent to such removal, or attempt to remove, shall upon convictian be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months: Provided, That said penalty

shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State: Provided, That this Section does not apply to liquors purchased from a Dispensary and bearing the proper label or certificate. All liquors in this State, except Dispensary liquors and those passing through this State, consigned to points beyond this State shall be deemed contraband, and may be seized in transit without warrant. And any steamboat, sailing vessel, railroad, express company or other common carrier transporting or bringing into this State, for sale or use therein, except by the Dispensary, shall suffer a penalty of five hundred dollars and costs for each offense, to be recovered by the Solicitor of the Circuit or the Attorney General by an action brought therefor in any Court of competent jurisdiction. The State Constable, Sheriff, municipal police or any lawful Constable may enter any railroad car, or express car, or depot, or steamboat, or other vessel, without warrant and make search for such contraband liquors, and may examine the way bills and freight books of said common carriers, and any one interfering with or resisting such officer, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months.

Section 34. That any person detected openly or in the act of violating any of the provisions of this Act, shall be liable to arrest without warrant: Provided, A warrant shall be procured within a reasonable time thereafter.

Section 35. That in case of conviction of violations of any of the Sections of this Act where punishment is not especially provided for, the person or persons or corporations so convicted shall be punished in the discretion of the Court trying the same. All alcoholic liquors, other than domestic wine, which do not have on the packages in which they are contained the label and certificates going to show that they have been tested by the Chemist and purchased from a State officer authorized to sell them, are hereby declared contraband, and on seizure will be forfeited to the State, as provided in Section 31: Provided, That this Section shall not apply to liquor held by the owners of registered stills in bonded warehouses. Persons having liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State Commissioner and applying for certificates to affix thereto.

Any persons affixing or causing to be affixed to any package containing alcoholic liquors, any imitation stamp or other printed or engraved label or device than those furnished by the State Board of

Control shall, for each offense, be liable to a penalty of ten days' imprisonment or twenty-five dollars' fine.

Section 36. Every person who dispossesses or rescues from a Constable or other officer, or attempts so to do, any alcoholic liquor taken or detained by such officer charged with the enforcement of this law shall, upon conviction, be imprisoned not less than three months nor more than twelve months, or pay a fine of not less than one hundred dollars nor more than five hundred dollars.

Section 37. Any person handling contraband liquors in the night time or delivering the same shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Section 38. Any wagon, cart, boat, or any other conveyance, together with horses, mules, or other animal or animals and harness, accompanying the same, transporting liquors at night, other than regular passenger or freight steamers and railway cars, shall be liable to seizure and confiscation, and to that end the officer shall cause the same to be duly advertised and sold and the proceeds sent to the State Treasurer.

Section 39. Every Dispenser when he sells a package containing liquor shall put a cross mark in ink on the label or certificate thereon extending from the top to the bottom and from side to side. When any liquor is seized because it has not the necessary certificates and labels required by this Act, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed and that the whiskey is not contraband.

Section 40. That any railroad, steamboat, express company or other common carrier shall incur a penalty of treble the invoice price of any alcoholic liquors lost or stolen in transit to or from the Dispensary, whether shipped as released or not, such penalty to be recovered by action in any Court of competent jurisdiction.

Section 41. That it shall be unlawful for any person to take or to solicit orders, or to receive money from other persons for the purchase or shipment of any alcoholic liquors for or to such other persons in this State, except for liquors to be purchased and shipped from the Dispensary, and any person violating this Section, upon conviction, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for a term of not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Section 42. It shall be the duty of Sheriffs, Deputy Sheriffs and Constables having notice of the violation of any of the provisions of

this Act to notify the Circuit Solicitor of the fact of such violation, and to furnish him the name of any witness within their knowledge by whom such violation can be proven. If any such officer or Solicitor shall willfully fail to comply with the provisions of this Section, he shall, upon conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and such conviction shall work a forfeiture of the office held by such person, and the Court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

Section 43. That in any indictment for the sale of intoxicating liquors it shall be competent to charge a series of sales on the same or on divers days up to the finding of the true bill to one person, or to different persons, naming one and stating the others to be unknown, in the same count, as was formerly the practice in indictments for retailing liquor without license in this State, and the prosecuting officer shall not be required to elect which particular sale he will rely on, but may offer proof of all, and proof of any one or of all the sales will sustain a verdict: Provided, Upon a trial and conviction or acquittal no other bill of indictment will lie for any sale occurring prior to bill found on the case tried, and that punishment shall be in such cases as for one sale: Provided, further, That this Section shall not be so construed as to prevent the prosecuting officer from giving out several bills of indictment for several sales in the first instance if he thinks best to do so.

Section 44. That whenever in this Act it is provided that process shall issue upon an affidavit based on information and belief, the affidavit shall contain a statement setting forth the sources of information, the facts and grounds of belief upon which the affiant bases his belief: Provided, That it shall not be necessary to set forth the sources of information, the facts and grounds of belief in the affidavit upon which a warant of arrest shall issue, but it shall only be necessary in cases of search warrants.

Section 45. That Chapter I, Title VII, of the Code of Civil Procedure of this State, entitled "Of Provisional Remedies in Civil Actions," shall not apply to any officer or person having duties to perform under this Act, and in no case shall an action lie against any such officer or person for damages to person or property, as provided in said Chapter.

Section 46. The Governor shall have authority to appoint one or more State Constables at a salary of not more than two dollars per day and such expenses as the Governor may deem proper when on duty, and two Chief Constables at not more than three dollars each

per day and such expenses as the Governor may deem proper, and also one or more detectives at reasonable compensation, to see that this Act is enforced, the same to be paid from the Dispensary fund in the same manner as the salary of the State Commissioner.

Section 47. That this Act shall be a public Act and shall go into effect immediately upon its approval by the Governor, and that all Acts or parts of Acts inconsistent with Act be, and are hereby, repealed.

Section 48. The State Board of Control elected under this Act shall not take charge until first of April, 1896.

Approved the sixth day of March, A. D. 1896.

ACT OF 1897---NO. 340.

AN ACT to amend an Act entitled "An Act to provide for the election of a State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in this State," and prescribe penalties for violation of the Dispensary Laws, and to police the same, approved March 6th, 1896, so as to regulate the importation of liquors for personal use.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That an Act entitled "An Act to provide for the election of the State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in the State, and prescribe further penalties for violation of the Dispensary laws, and to police the same," approved March 6th, 1896, be amended as follows: In Section 1 strike out all of said Section after the word "offense" on line 22 of the printed Act and substitute therefor the following: All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful or deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed, or other liquor containing alcohol from any other State or foreign country shall first certify to the chemist of

the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample, the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matter, he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by the said chemist post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped into this State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed, or other liquor or liquid containing alcohol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue, and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any person attempting to counterfeit said certificate or to make any improper use thereof, or who shall make any false statement in obtaining, or attempting to obtain, the same shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provisions of this Section, shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analyses, and the express charges on samples, shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this

Section, he shall, upon conviction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense." So that said Section when amended will read:

"Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter, or exchange, receipt or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereafter provided, is hereby prohibited under a penalty of not less than three nor more than twelve months at hard labor in the State Penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment, in the discretion of the Court, for each offense. All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful and deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed or other liquor containing alcohol from any other State or foreign country, shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters, he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee, and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by the said chemist post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped into this State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed or other liquor or liquid containing alco-

hol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any persons attempting to counterfeit said certificate or to make any improper use thereof or who shall make any false statement in obtaining or attempting to obtain the same shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months, or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provision of this Act shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analysis and the express charges on samples shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this Section, he shall, upon conviction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense."

Amend Section 2 by striking out the word "use" on the 19th line of printed Act and substitute the word "sale" therefor after the word "lawful." So that the Section as amended will read:

"Section 2. A Board consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act, the said Board to be composed of men not addicted to the use of intoxicating liquors. The terms of office of the Board so elected shall be for one, two, three, four and five years, respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member, his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of bookkeeping and accounting as they may deem advisable, and shall

elect a clerk or bookkeeper who shall hold his office during the pleasure of the Board and shall receive as compensation for his services a salary of $1,500 per annum. The State Board of Control, under such rules and regulations as may be adopted by said Board, shall purchase all liquors for lawful sale in this State, and shall have the same tested and declared to be pure as hereinbefore and hereinafter provided."

Amend Section 3 by striking out the word "use" on the 9th line of the printed Act and substitute the word "sale" therefor after the word "lawful;" also amend by adding on the 27th line of the printed Act, after the word "pure," the words "and free from poisonous, hurtful and deleterious matter;" also, amend by adding the words "sale and" on the 59th line, after the word "for." So that the Section as amended will read:

"Section 3. That the State Board of Control shall at the expiration of the term of the present Commissioner and at the expiration of every two years thereafter appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful sale in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the city of Columbia, in this State, and hold his office two years from his appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers and shall receive an annual salary of $2,500, payable from the Dispensary fund upon the warrant of the State Board of Control. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of $1,200, and such other assistants as, in the opinion of the Board of Control, may be deemed necessary. He shall not furnish to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the chemist of the South Carolina College and declared to be pure and free from poisonous, hurtful and deleterious matters: *Provided*, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants. Each County Dispenser shall remit to the State Treasurer all moneys accru-

ing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County Dispenser in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall, before entering upon the duties of his office, execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers in the penal sum of $10,000, for the faithful performance of the duties of his office: *Provided*, That any officer of the State Dispensary or of the County Dispensary shall have the right to give either a personal bond or a bond in a guarantee company, any rule or regulation to the contrary notwithstanding: *Provided*, The bond shall be approved as other official bonds are approved. In all purchases or sales of intoxicating liquors made as contemplated in this Act the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the County Dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for sale and use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates any package containing liquors which shall be shipped from place to place within this State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit, with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the State Board of Control, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating

liquors within this State in violation of law, shall, upon conviction thereof, be punished by a fine of not less than $500 and imprisonment in the Penitentiary for not less than one year for each offense."

Amend by striking out Section 41 of the Act, and change the number of subsequent Sections in the Act, so that Section 42 will become Section 41 and the other Sections be numbered accordingly.

Approved the 5th day of March, A. D. 1897.

BRYAN PTG. CO., COLUMBIA, S. C. 17586